United Nations A/73/310

General Assembly

Distr.: General
7 August 2018

Original: English

Seventy-third session
Item 74 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submitted pursuant to Human Rights Council resolutions 15/8 and 34/9.

* A/73/50.

18-12964 (E) 100918

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

In the present report, the Special Rapporteur examines the issue of the right to housing for residents of informal settlements and the commitment made by States to upgrade such settlements by 2030. Nearly one quarter of the world's urban population lives in informal settlements or encampments, most in developing countries but increasingly also in the most affluent. Living conditions are shocking and intolerable. Residents often live without water and sanitation, and are in constant fear of eviction.

Past approaches have been premised on the idea of eliminating "slums", often resorting to evictions and relocating residents to remote locations on the outskirts of cities. The present report proposes a very different, rights-based approach that builds upon informal settlement communities and their inherent capacities. It understands informality as resulting from systemic exclusion and advances a set of recommendations for supporting and enabling residents to become full participants in upgrading. The recommendations have their basis in international human rights obligations, particularly those flowing from the right to housing, and cover a number of areas, including the right to participation, access to justice, international cooperation and development assistance, environmental concerns, and business and human rights.

The report reaches some simple but urgent conclusions: the scope and severity of the living conditions in informal settlements make this the most pervasive violation of human rights globally. The world has come to accept the unacceptable. It is a human rights imperative that informal settlements be upgraded to meet basic standards of human dignity. Recognizing this, and mobilizing all actors within a shared human rights paradigm, can make the 2030 upgrading agenda achievable.

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I. The right to housing and informal settlements

A. The Sustainable Development Goals imperative: upgrade informal settlements by 2030

1. Nearly one quarter of the world's urban population, 883 million people, live in informal settlements; 520 million of these people are in Asia. In sub-Saharan Africa, over half of city dwellers live in informal settlements; in Latin America and the Caribbean the estimate is 21 per cent.[1] Conditions in these settlements are often inhumane. Many residents live in overcrowded, insecure dwellings, without water and sanitation, fearful of eviction and subject to preventable life-threatening illnesses.

2. States have committed to taking action. Goal 11 of the 2030 Agenda for Sustainable Development commits States to "upgrade slums" by 2030. This is attached to the broader commitment to ensure access for all to "adequate, safe and affordable housing" by 2030.

3. This is a tall order, to say the least. The aim of the present report is to provide concrete guidance on how to draw on human rights-based approaches that have proven successful, building on the capacities of residents of informal settlements to direct and manage upgrading processes. Rather than criminalizing residents of informal settlements, the proposed approach recognizes and supports them as rights claimants. The report provides a set of recommendations developed with input from residents of informal settlements, experts and responses to a questionnaire from governments, non-governmental organizations, national human rights institutions and international financial institutions, as well as through information gathered by the Special Rapporteur during country visits. They are grounded in applicable international human rights standards.[2]

B. Informal settlements or "slums"?

4. While Agenda 2030 refers to "slums", the Special Rapporteur prefers the term "informal settlements" as one that is more in keeping with a human rights-based approach to housing. The term "slum" is often considered pejorative and stigmatizing and has generally led to bad policy: "slums" are often viewed as a problem requiring "clearance", rather than as communities to be supported.[3] Households reported by governments as having been "upgraded" have often been warehoused in housing blocks devoid of dignity, culture or community, or displaced to outlying urban wastelands with no access to work, social ties, transportation or services.

5. The present report proposes a radically different approach centred on the right to housing. It understands that informality is created and exacerbated by the imposition of a particular system of laws, private markets, planning and resource allocation that neglects and violates the fundamental rights of those who have no choice but to rely on informal settlements. Colonizing systems of land and property

[1] United Nations, *The Sustainable Development Goals Report 2018* (New York, 2018) p. 24; and report of the Secretary-General on progress towards the Sustainable Development Goals (E/2018/64, statistical annex, p. 83).

[2] Officials and development actors involved in upgrading of informal settlements should also be aware of and apply the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I) and the guiding principles on security of tenure for the urban poor (A/HRC/25/54), and fully comply with them in their planning and project implementation.

[3] For a discussion of terminology, see United Nations Conference on Housing and Sustainable Urban Development (Habitat III), issue paper No. 22, "Informal settlements" (31 May 2015).

have been imposed on indigenous peoples' relationships to land and housing. In developing countries, large segments of the population are deemed illegal when housing themselves in the best manner they can and live under constant threat of forced removal from their homes. In affluent countries, the law not only prevents the construction of rudimentary shelter by those who are homeless, it criminalizes them for eating and sleeping.

6. Informality is a response to exclusionary formal systems. Those who migrate to cities for work or who are displaced from other neighbourhoods must create, through informal settlements, a subsidiary housing system to meet urgent needs that the formal housing system has failed to meet. Land at the margins of cities is often first settled informally, with informal businesses arising to respond to needs for water, sanitation, electricity, transportation, food, clothing and other necessities. These settlements provide necessary housing for the labourers and service providers on whom cities rely, yet they are criminalized, denied services, face widespread discrimination and are forced to pay exorbitant prices for basic necessities or go without.

7. Informal settlements range from constantly displaced homeless encampments in the most affluent countries,[4] to massive communities in the global South, such as Orangi Town, in Karachi, Pakistan, with an estimated 2.4 million inhabitants.[5] Modalities include squats in abandoned buildings, improvised homes in containers, tents or boats or shacks made of whatever materials can be scavenged. Elsewhere, long established informal communities may consist of durable housing of bricks and mortar. Unregulated and often exploitative informal rental markets constitute a growing component of informal housing.

8. Residents of informal settlements affirm humanity in the most inhumane circumstances. The Special Rapporteur has visited many informal settlements in the global North and South. She has found the severity of the living conditions and the failure of States to respond to them profoundly disturbing.

9. In a large informal settlement in Mumbai, India, the Rapporteur saw a rodent infestation caused by a lack of waste removal. She met children playing on garbage heaps as if they were trampolines in a Roma settlement in Belgrade. She visited residents in overcrowded shacks in Mexico City stretching alongside a functioning railway line. She experienced complete darkness — during the daytime — in the homes of persons of African descent who had no access to electricity living just outside of Lisbon. She saw children with disabilities languishing alone in the back of homes in settlements in Cabo Verde. She visited migrants in Santiago living in damp abandoned buildings with live electrical wires exposed. She has sat with people in homeless encampments under highway bypasses and on pavements in California and in Delhi, India, with no access to toilets or showers and constantly fearing being "cleaned" off the streets. In Buenos Aires, she toured an unrecognized settlement to which police and ambulances refuse services. In Seoul she met with residents living amid rubble, in half-demolished homes on the site of violent forced evictions — surrounded by skyscrapers. In Indonesia and the Philippines, she visited informal communities in flood prone areas, fearful of being evicted and forced to move away from their homes and communities.

10. And yet, despite these disastrous outcomes of imposed informality, residents express a strong sense of community and home. Streets are named, houses numbered, residents' associations formed, community centres and schools built, social

[4] See National Law Center on Homelessness and Poverty, "Tent city, USA: the growth of America's homeless encampments and how communities are responding" (2017).

[5] Tabrez Uz Zaman, H.D. Goswami and Yamin Hassan, "The impact of growth and development of slums on the health status and health awareness of slum dwellers", *International Journal of Medical Research and Health Sciences*, vol. 7, No. 3 (2018), p. 56.

programmes instituted and shops and services established. In fact, for all their informality, these settlements are critical components of the economies of most major cities and are a main provider of housing in the global South and economies in transition.

C. Understanding informal settlements as both rights violations and as rights claims

11. From a human rights perspective, informal settlements have a dual nature. On the one hand, they are systemic human rights violations, the effects of State actions, inaction and policies that deprive millions of their fundamental human rights.

12. A State is in violation of international human rights law if any significant portion of the population is deprived of access to basic shelter or housing. States are obliged to adopt "enabling strategies" to implement the right to housing for residents of informal settlements within the shortest possible time, by all appropriate means, using the maximum of available resources.[6] It is obvious that most States are in clear non-compliance with this obligation. Indeed, the scope and severity of the living conditions in informal settlements make them the most pervasive violation of the human rights of dignity, security, health and life worldwide. It is critical that they be recognized as such.

13. On the other hand, informal settlements are often an incredible accomplishment, a profound expression of individuals, families and communities claiming their place and their right to housing. They are "habitats made by people", who are creating homes, culture and community life in the most adverse circumstances.[7] The act of claiming places in cities and constructing homes challenges spatial exclusion, the appropriation of land and property by the wealthy for no purpose but speculation, the colonization of indigenous territories and attempts by authorities to render entire communities invisible by not recognizing them. In response, informal settlements are a statement: "we are here" and "we will not disappear". They are a form of grass-roots human rights practice led by those excluded from housing, women, those who experience the effects of economic inequality, people with disabilities, migrants, and those facing racial and ethnic discrimination. It is within this dual recognition of informality as rights violating and rights claiming that a rights-based approach must be grounded.

14. A human rights-based approach to informal settlement upgrading, based on the right to remain in situ where possible, and to be adequately housed nearby when relocation is necessary or preferred, is an essential component of a broader commitment to bringing human rights to cities, and to the new urban agenda of sustainable inclusive development. An integrated human rights approach, as proposed in the present report, focuses on securing adequate housing, in all of its dimensions, as a response to structural conditions and societal dynamics that deprive residents of the right to housing, with a view to enabling communities to define, for themselves, what constitutes a home that provides dignity and security.

15. The following recommendations for rights-based upgrading have been fashioned to assist in the implementation of the 2030 Agenda for Sustainable Development and the New Urban Agenda by harnessing the potential of a human

[6] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, para. 10, and general comment No. 4 (1991) on the right to adequate housing, para. 14.

[7] Lorena Zárate, "They are not 'informal settlements' — they are habitats made by people", The Nature of Cities, 26 April 2016.

rights-based approach. They demand a significant shift in the relationship between governments and informal communities from one in which governments criminalize, penalize and obstruct the process of claiming the right to housing within informal settlements, to one in which this process is community led and enabled through new approaches to ownership, tenure, inclusive planning, innovative legislative and programmatic initiatives, and rights-based participation and accountability. The recommendations should inform the actions of all levels of government, development agencies, non-governmental organizations and private actors involved in upgrading of informal settlements.

II. Recommendations for rights-based upgrading of informal settlements

A. Core principles of rights-based upgrading

1. Require that upgrading programmes comply with the right to adequate housing

16. The overriding objective for informal settlement upgrading should be the full enjoyment of the right to adequate housing. Upgrading policies, programmes and strategies should incorporate each of the principles for human rights-based housing strategies described in the report of the Special Rapporteur to the Human Rights Council contained in document A/HRC/37/53.

17. Effective and accessible procedures must be established to ensure that residents can hold governments and other actors accountable for all aspects of the right to housing, including the positive obligations to apply the "maximum" of "available resources" and "all appropriate means" to address the conditions in which people in informal settlements live.[8]

18. Decision-making at all levels of government, as well as within development agencies and international financial institutions, must be held accountable to this standard.

19. Residents of informal settlements must be provided with information about the right to housing. It is helpful if declarations or principles based on the right to housing are adopted and applied to all aspects of upgrading. An agreement concerning urbanization of informal settlements adopted by the Asociación Civil por la Igualdad y la Justicia affirms 10 key upgrading principles based on the right to housing and offers a good example.[9]

20. The Kenya National Commission on Human Rights was engaged through a court order to oversee the allocation of upgraded units to the residents of Kibera Soweto East. The Commission reports that it has adopted the values and principles of a human rights-based approach, rooted in constitutional provisions requiring that state organs and persons respect the rule of law, participation of the people, human dignity, human rights, equity, social justice, non-discrimination, integrity, transparency and accountability.[10]

[8] International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1; and Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 14.

[9] "Acuerdo por la urbanización de las villas", available at http://acuerdoporlaurbanizacion.org/wp-content/uploads/2016/10/AcuerdoxlaUrbanizacion-1.pdf (Spanish only).

[10] Submission of the Kenya National Commission on Human Rights for the present report.

2. Address all of the components of the right to housing in an integrated fashion, recognizing the links between housing and other social rights

21. As an end goal, upgrading schemes must fulfil all aspects of the right to adequate housing under international human rights law. This includes living without discrimination, in security, peace and dignity, in housing with secure tenure, that is affordable, habitable, culturally adequate, in a decent location, accessible, and where services are available.[11] These requirements should be refined by communities and households themselves to address different contexts.

22. Programmes to address particular components of the right to adequate housing, such as securing formal title or providing access to water or sanitation infrastructure, should not be implemented in isolation from, or at the expense of, other adequacy dimensions. For example, fees charged for sanitation or water may compromise the ability to remain in housing. Creating secure formal title may give rise to speculation and erode affordability, leading to the displacement of the poorest residents. Upgrading must begin by surveying and accurately identifying the housing, social, economic, health, educational and other needs of residents. A holistic approach, addressing this wide range of needs, should be adopted in all upgrading strategies.

3. Recognize the links between adequate housing and access to livelihood in the informal economy and support community economic development

23. The struggle for a livelihood dominates everyday life for residents of informal settlements. Unregulated markets and lack of rule of law can lead to exploitation and further economic hardship. Many must pay significant amounts to private operators for transportation from the settlement to work or school. Residents are often denied access to water and sanitation by unaffordable fees and access to essential services may be ruled by cartels. Ensuring access to water and toilets and other necessities, regardless of residents' ability to pay, is an immediate priority in upgrading.

24. It must also be recognized that many residents rely on informal economic activity carried out from home to survive, whether they be hairstylists, shop or cafe owners, mechanics, or recyclers. Informal residents must be able to ensure that the location and design of upgraded housing supports their means of livelihood.

25. In Delhi, India, the Kathputli Colony, made up of street performers (musicians, puppeteers, magicians and others) relied on spaces within their informal settlement to perform, but were relocated to apartment blocks. They had unsuccessfully challenged the relocation in court, asking for an assurance that the project would be executed in such a manner that sufficient space would be made available for them to undertake the unique character of their vocation and display their skills for earning a livelihood.[12]

4. Recognize the right to remain in situ

26. The right to remain in one's home and community is central to the right to housing.

27. In situ upgrading allows residents to retain their connections to their locality, protects social cohesion and can help to avoid disrupting livelihoods.[13] Relocation, in contrast, has many possible negative consequences and often results in a poorer

[11] Committee on Economic, Social and Cultural Rights, general comment No. 4.

[12] High Court of Delhi, Bhule Bisre Kalakar Co-Operative Industrial Production Society Ltd. and Others v. Union of India and Others, W.P.(C) 1290/2014 and CM APPL. 3834/2014, 30 March 2014, para. 5. Available at www.kathputlicolonydda.com/pdfs/Judgement-dated-20.03.2014.pdf.

[13] See guiding principles on security of tenure.

quality of life. It has particularly negative repercussions for people with disabilities, the elderly, and children and young people. As Youth for Unity and Voluntary Action has demonstrated in India in its collaboration with Leher on the #UprootedChildhoods campaign, the effects of displacement and relocation on children include disrupted schooling and social networks and often the loss of safe spaces to play.[14]

28. The right to in situ upgrading must be recognized in law and communities should be provided with representation to seek enforcement of this right. Barrio Rodrigo Bueno in Buenos Aires, visited by the Special Rapporteur in 2016, has been successful in this respect. Situated in the midst of commercial and luxury residential developments, the community successfully contested applications for eviction and won the right to in situ upgrading.[15] Legislation has recently been enacted which provides for the upgrading of the community with ongoing communication with and collaboration of residents.[16]

5. Rely on meaningful engagement and cease the use of eviction procedures

29. States should immediately cease and desist from seeking to justify evictions of residents of informal settlements under domestic legal procedures. Courts should refuse to authorize such evictions in any but the most exceptional circumstances, and only when residents have been fully engaged in the process, when alternative housing of comparable or better quality is being provided and when all other requirements of international human rights have been honoured. Applications to evict are almost always indicative of flawed processes and lack of meaningful engagement with communities.

30. The approach taken by the South African courts moves in the right direction and should be applied by other courts. In the *Melani* case, the Slovo Park informal settlement challenged the decision of the City of Johannesburg not to apply for in situ upgrading and instead to relocate the community to an alternative location 11 km away.[17] The court held that the Government's upgrading policy, as required by the constitutional right to housing, envisages "a holistic development approach with minimum disruption or distortion of existing fragile community networks and support structures and encourages engagement between local authorities and residents living within informal settlements".[18] Relocation must be "the exception and not the rule" and any relocation must be to a location "as close as possible to the existing settlement".[19] On this basis, the City was ordered to reverse the decision to relocate the community and apply for funding for in situ upgrading.[20]

[14] See http://leher.org/campaigns/uprootedchildhoods/.

[15] See the work of the Centro de Estudios Legales y Sociales at www.cels.org.ar/web/2015/04/amicus-por-el-barrio-rodrigo-bueno/.

[16] Argentina, *Rodrigo Bueno urbanization law*, No. 5798 (23 March 2017), available at http://www2.cedom.gob.ar/es/legislacion/normas/leyes/ley5798.html. Proposals to designate the community land as public so as to avoid inflationary pressures were not, however, incorporated into the legislation (see Asociación Civil por la Igualdad y la Justicia, supplementary document concerning land management policies for redevelopment of informal settlements, available at www.acuerdoporlaurbanizacion.org/#complementario (Spanish only).

[17] High Court of South Africa, *Mohau Melani and Others v. City of Johannesburg and Others*, Case No. 02752/2014, 22 March 2016.

[18] Ibid., para. 34.

[19] Ibid., para. 35.

[20] Ibid., Order, paras. 1 and 2.

6. Where relocation is necessary or preferred, ensure compliance with the right to housing and all other human rights standards

31. Sometimes upgrading requires relocation and resettlement because of hazardous or dangerous conditions that cannot be mitigated, or relocation may be chosen by communities for other reasons. In these cases, all affected groups and households must be allowed to participate in the decisions regarding relocation, including the geographic site, the timing of relocation and the allocation and design of the new housing.

32. Where the government proposes relocation, the burden of proof is on the State to show why in situ upgrading is unfeasible. Authorities must publish and disseminate their reasoning to the community and allow it to be reviewed by a body capable of reversing the decision to relocate, providing a full hearing to residents.

33. Where most residents of a community prefer relocation but some do not consent, those residents, where possible, should be allowed to remain. Where temporary relocation is required for in situ upgrading, this must be time-limited and meet adequacy and all human rights standards.

34. In any instance of relocation, whether temporary or permanent, or from public or private land,[21] States must comply with the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I). These require, in particular, that relocation sites should be located in the vicinity of the original site, have access to all necessary amenities (particularly water, sanitation and electricity) and maintain access to livelihoods. Authorities must provide full and adequate real and personal compensation for any costs.[22] Relocation sites must provide land and housing to residents that are of equal or better size and quality as that which they left (ibid.).

35. In Dakar, informal settlement dwellers had to be relocated to make way for a new road. Residents identified as their central needs access to basic infrastructure, preventing flooding and obtaining secure tenure. All of these needs were met. The cost of land in the resettlement site was adjusted based on household means, with the most vulnerable obtaining title without cost. Business owners were compensated for loss of revenue, homeowners were offered cash compensation or a free house and renters were given six months' free rent.[23]

7. Prohibit any forced eviction and recognize a wide range of tenure systems

36. The right to a secure home is a universal right under international human rights law. Lack of security of tenure can never justify forced evictions of those residing in informal settlements. Security of tenure under domestic law should not, therefore, be restricted to those with formal title or contractual rights to their land or housing. As noted by the previous Special Rapporteur in the guiding principles on security of tenure (A/HRC/25/54, para. 5), security of tenure should be understood broadly as "a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one's home in security, peace and dignity". In order to protect the security of home in all circumstances, States must promote, protect and strengthen a variety of tenure forms.

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[21] See, for example, Constitutional Court of South Africa, *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd and Another*, Case No. CCT 37/11, 1 December 2011, para. 95.

[22] See submission of Afghanistan Independent Human Rights Commission for the present report.

[23] Pierre Graftieaux, "Moving people to help people move", *Transportation Research Procedia*, Vol. 27 (2017).

Tenure arrangements of the most vulnerable and marginalized should be accorded priority (ibid.).

37. Communities should be supported in collecting and documenting understandings of informal tenure status through enumerations and tenure registration, with a view to ensuring long-term security. Administrative processes aimed at facilitating the regularization of informal settlements must be affordable, accessible, timely and not overly complex.

38. Namibia has informed the Special Rapporteur that the Flexible Land Tenure Act of 2012 provided for more planning, servicing and ownership of land in informal settlements in order to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title; to provide security of title for persons who live in informal settlements or who are provided with low income housing; and to empower the persons concerned economically by means of these rights.[24]

8. Revise laws to recognize informal settlements and adopt inclusionary planning and zoning

39. Planning and zoning should never be used to justify unwarranted demolition of informal settlements, to deny access to services or to prevent relocation to proximate lands. In Lagos, Nigeria, the Urban and Regional Planning and Development Law of 2010 retroactively granted powers to authorities to seal up and demolish structures that contravened Lagos planning laws, resulting in the demolition of the informal settlement of Makoko, which housed approximately 85,000 people.[25]

40. Planning and zoning often serve to benefit more affluent communities, investors and development interests at the expense of those in need of housing. Planning must prioritize the allocation of appropriate land, services and zoning for residential housing close to services, employment and transportation and extend services and transportation to areas where informal settlements are located. In Medellin, Colombia, inclusionary planning included urban escalators and cable cars connecting informal neighbourhoods to central nodes of the city, leading to revitalization and successful upgrading.[26]

41. No urban development proposals should be approved if they fail to include housing for those already living in the area being developed. Any development must provide existing residents with housing that fully meets their needs, in terms of affordability, design and adequacy.

9. Provide access to serviced land and economical building materials

42. Where it is not possible to provide new arrivals to cities with built housing, land should be set aside or acquired for housing those in need, with water and sanitation facilities and temporary shelter available while houses are built on allocated plots. Tax incentives should be implemented to encourage private owners to make vacant land available for housing.

43. Economical materials should be provided for self-construction of homes. Innovations Housing, a non-governmental organization working in East Africa, has

[24] Submission of Namibia for the present report.

[25] Akinola E Akintayo, "Planning law versus the right of the poor to adequate housing: a progressive assessment of the Lagos state of Nigeria's Urban and Regional Planning and Development Law of 2010", *African Human Rights Law Journal*, vol. 14, No. 2 (2014).

[26] Luisa Sotomayor, "Medellin: the new celebrity?" Spatial Planning in Latin America, 26 August 2013.

supported social enterprises to develop economical building materials such as "soil bricks".[27]

10. Combat and prohibit discrimination and harassment against informal settlement residents and cease punitive denials of access to basic services

44. People living in informal settlements face widespread discrimination and harassment on the basis of their housing status. This includes harassment of residents, bullying of children in schools, denial of access to credit, basic services, social programmes, public transportation, health care and education, and arrest and incarceration of community leaders. Residents are also frequently denied social support and employment for lack of a formal address.

45. In Canada, local authorities used tactics that included spreading chicken manure and fish fertilizer on an encampment, to enforce a by-law prohibiting overnight shelters in parks. Residents mobilized and the by-law was subsequently found by a court to violate constitutional rights to life, liberty and security of the person of residents of the encampment.[28]

46. Attempting to discourage residents from remaining in informal settlements or encampments by denying access to water, sanitation and health services and other basic necessities, as has been witnessed by the Special Rapporteur in San Francisco and Oakland, California, United States of America,[29] constitutes cruel and inhuman treatment and is a violation of multiple human rights, including the rights to life, housing, health and water and sanitation. Such punitive policies must be prohibited in law and immediately ceased.[30] Following expressions of concern from the Human Rights Committee, the United States federal Government introduced funding incentives for municipalities to rescind by-laws that criminalize homelessness.[31] More robust measures, however, are required.

47. States must adopt measures to ensure that discrimination, harassment or criminalization on the basis of tenure or housing status is prohibited in all areas and human rights institutions should address this form of discrimination.[32]

11. Recognize diverse household circumstances and address needs of marginalized groups

48. Upgrading programmes must ensure that the unique needs and different experiences of women, persons with disabilities, migrants, non-citizens, the elderly, children and other marginalized groups are recognized and addressed.

49. The unique needs of women and girls, including vulnerability to violence and sexual assault, discussed below, must always be a priority. Consideration must also be given to practical needs related to menstruation and societal perceptions of privacy and expectations of modesty. A woman in the Mukuru settlement in Nairobi explained: "During my monthly period I can't urinate in the tin so I have to wait until

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[27] See Innovations Housing website (http://innovationshousing.com/projects/africa.htm).

[28] Supreme Court of British Columbia, *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, 21 October 2015.

[29] Darwin Bond Graham, "United Nations expert describes Oakland and California's homeless crisis as 'cruel'", *East Bay Express*, 21 January 2018.

[30] See concluding observations of the Human Rights Committee on the fourth periodic report of the United States of America (CCPR/C/USA/CO/4, para. 19) and https://wraphome.org/what/homeless-bill-of-rights/california-right-to-rest-act/.

[31] National Law Center on Homelessness and Poverty, "The cost of criminalizing homelessness just went up by $1.9 billion", press release, 18 September 2015, available at www.nlchp.org/press_releases/2015.09.18_HUD_NOFA_criminalization.

[32] Guiding principles on security of tenure (A/HRC/25/54, para. 5), paras. 10 and 50–59.

morning. Because sometimes some drops of blood can remain in the tin and everyone uses the tin so it's embarrassing".[33]

50. For persons with mobility impairments, toilets are difficult to reach when offered on a communal basis and are rarely accessible, leaving persons with disabilities to manage within their homes.[34]

51. Upgrading programmes must be culturally sensitive. This requires attention to spatial planning, colour, size of units, facilities and diverse religious customs. Upgrading indigenous settlements must ensure that indigenous people themselves are actively involved in developing their housing, drawing on their knowledge and practices.[35] While visiting Mexico City, the Special Rapporteur was struck by the contrast between government designed housing lacking in cultural influence and an urban upgrading project designed by indigenous residents which incorporated indigenous art, a sweat lodge, a gathering space and social enterprises.[36]

12. Ensure adequate budgeting and resource allocation with the input and oversight of residents

52. Ensuring adequate budgetary allocations to address housing needs in informal settlements is a central human rights obligation of States. To date, the international community, domestic courts and human rights bodies have failed to adequately hold States accountable to the obligation under international human rights law to apply the maximum of available resources to upgrading informal settlements. States must ensure that public expenditure is sufficient to meet commitments in the 2030 Agenda while also adopting taxation measures, to discourage investors from leaving land and property vacant for speculative purposes and to address growing disparities in wealth and income.

53. Governments frequently subsidize housing, infrastructure and commercial projects in formal areas that primarily benefit wealthy and middle-class populations, while denying subsidies to the residents of informal settlements. States must review budgetary measures to ensure that subsidies are directed to those most in need.

54. Budgeting and resource allocation for upgrading must be subject to transparency, accountability and effective oversight by affected residents.

55. In the Saeng Mook Da settlement in Thailand, the government informs community leaders when funding for construction and upgrading work is available. Community members then convene and make collective decisions regarding allocations with particular attention to those without sufficient means as beneficiaries. A community committee reviews all decisions on allocation of funds.[37]

13. Ensure a non-discriminatory human rights-based approach to credit and microfinance

56. Upgrading programmes too often rely on financing of home ownership through mortgage subsidies, even though 60 to 80 per cent of those in need of housing cannot

[33] Extract from story prepared by Edith Kalela of the Muungano wa Wanavijiji/Akiba Mashinani Trust, on file with the authors; see further Inga T. Winkler and Virginia Roaf, "Taking the bloody linen out of the closet: menstrual hygiene as a priority for achieving gender equality", *Cardozo Journal of Law and Gender*, vol. 21, No. 1 (2015).

[34] See submission of Kenya for the present report.

[35] See United Nations Declaration on the Rights of Indigenous Peoples, arts. 23 and 24.

[36] See the work of the Habitat International Coalition (www.hic-gs.org/).

[37] Nausica Castanas and others, "Leave no one behind: community driven urban development in Thailand", working paper (London, International Institute for Environment and Development, December 2016).

qualify for them.[38] In sub-Saharan Africa, only about 3 per cent of households have access to mortgages from the formal financial system.[39]

57. Microfinance may be a preferred option, as it can be tailored to incremental building of housing and upgrading, is not secured through a lien on one's home and does not require land title.

58. In Tajikistan, a microfinance scheme implemented by the local Habitat for Humanity in coordination with domestic microfinance firms assisted more than 112,000 people to improve their living conditions through microfinance loans.[40]

59. Although microfinance is targeted at poorer individuals and households, selection is usually based on perceived credit risk rather than need. Interest rates tend to be higher than in mainstream financial institutions. Monitoring of the microfinance sector, with participation by affected communities, must be undertaken to ensure accountability and accessibility for those most in need.

60. Measures should also be taken to prevent banks and other financial institutions from unreasonably refusing to offer credit to informal settlement residents. Assessing credit worthiness on alternative bases so as not to exclude informal households is a human rights obligation and good business practice.

61. Credit provision, however, is too often advanced as the sole strategy to ensure access to housing. Such initiatives should be regarded as additional to, and not in lieu of, direct government investment in upgrading.[41]

14. Integrate the skills and labour capital of residents into upgrading programmes

62. Upgrading programmes require the employment of large numbers of people in numerous skilled and manual roles. Upgrading projects should employ local residents and pay fair remuneration. The input and expertise of community members should be drawn upon with respect to land and materials acquisition, building design, construction and other areas.

63. In Hanna Nasif, in the United Republic of Tanzania, community members who wished to participate were trained in construction and other areas. The skills gained through the programme increased their employability and income.[42]

15. Address inflationary effects of upgrading and combat speculation

64. In situ upgrading of settlements can attract middle-income households and drive up housing prices, which in turn leads to displacement of residents from their upgraded communities.

65. Following an upgrading programme in Dar es Salaam, United Republic of Tanzania, landlords increased rents per room by an average of 160 per cent.[43] In

[38] United Nations Conference on Housing and Sustainable Urban Development (Habitat III), issue paper No. 20, "Housing" (31 May 2015).

[39] Liam Clegg, "The World Bank and the globalisation of housing finance: mortgaging development" (London, Bretton Woods Project, July 2018).

[40] See www.habitat.org/where-we-build/tajikistan.

[41] Ananya Roy, *Poverty Capital: Microfinance and the Making of Development* (Routledge, 2010).

[42] Anna Anael, Stephen Mukiibi and Nicholas Makoba, "The impacts of informal settlement upgrading on housing affordability: the experience of Hanna Nassif in Dar es Salaam, Tanzania" *Africa Habitat Review*, vol. 10, No. 10 (November 2016).

[43] Rasmus Precht, "Informal settlement upgrading and low-income rental housing: impact and untapped potentials of a community-based upgrading project in Dar es Salaam, Tanzania" (2005). Available at http://siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/336387-1269364699096/6892630-1269364758309/precht.pdf.

Kibera, Kenya, studies have found that former residents have been unable to afford to purchase or pay monthly rents for new upgraded properties.[44]

66. Measures such as subsidies to assist with rental payments or purchase prices and caps on rental and sale prices must be put in place to ensure that housing in upgraded settlements remains affordable to residents and that speculation and profit-making from upgrading is curbed. Other measures could also include designating land on which upgrading occurs as a public asset, placing restrictions on who can purchase or rent upgraded housing and imposing time limits on when it can be sold.

16. Upgrade refugee and humanitarian relief camps to ensure the right to housing

67. Housing provided through humanitarian relief is often considered to be temporary when in fact the camps have become longer-term homes, akin to informal settlements. Residents live in temporary structures that are inadequate for longer-term occupancy and are often denied access to essential services such as electricity and sewerage.[45] The Zaatari refugee camp, housing close to 80,000 people, has been described as Jordan's fourth largest city, and yet residents, who are unlikely to be able to return to their homes of origin, continue to live in tents and caravans without access to basic services.[46]

68. Humanitarian relief provided on a long-term basis must be made fully compliant with the right to adequate housing and when relief camps become de facto informal settlements, they must be upgraded to meet standards applicable to longer-term housing.

17. Address and prevent corruption

69. With lack of governance structures, rule of law and oversight mechanisms, corruption among developers, the construction industry and public officials is a common challenge in upgrading schemes. The precarious legal status of many residents, combined with their general vulnerability, means that corruption often goes unchallenged. Corruption increases costs, discourages international assistance and damages the integrity of participation processes.

70. During the slum upgrading programme (KENSUP) in Soweto East in Nairobi, Kenya, 31 per cent of residents believed corruption would mean they would not benefit from the project.[47]

71. Measures must be put in place to prevent corruption at all stages of upgrading, from land acquisition, to tendering of contracts, to the allocation of upgraded housing units. Rigorous independent oversight of all aspects of the upgrading process, including all public-private partnerships, should be put in place and, where appropriate, communities should be afforded oversight and decision-making authority over resource allocation and anti-corruption measures.

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[44] Bernardine Mutanu and Faith Nyamai, "Upgraded slum houses 'too expensive'", *Daily Nation*, Nairobi, 28 August 2013.

[45] See, for example, "15 minutes to leave: denial of the right to adequate housing in post-quake Haiti" (London, Amnesty International, 2015)

[46] Office of the United Nations High Commissioner for Refugees, Zaatari Refugee Camp February Factsheet. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2018.02.04 FACTSHEET-ZaatariRefugeeCampFEB2018.pdf.

[47] Rosa Flores Fernandez and Bernard Calas, "The Kibera Soweto East Project in Nairobi, Kenya", Institut français de recherche en Afrique, Nairobi (2011).

B. Right to participation and inclusion

18. Recognize and implement participation of residents as a right at all stages of the upgrading process

72. Fundamental to all relocation strategies is the right of residents to participate. This is both a legal requirement and an operational necessity. Failure to involve residents in relocation planning and implementation means the residents' understandings of challenges and their vital input on how to address them will be lost. Residents' full participation in upgrading programmes builds local capacity for governance, promotes resourcefulness, efficiency, adaptation to local conditions and local ownership and ensures the achievement of sustainable results.[48]

73. The right to participation should be protected in law through constitutional or legislative provisions, as in the Constitution of Kenya.[49] The right to participate must be ensured from the earliest stage of designing and planning through to implementation, monitoring and evaluation.[50]

74. The right to participate should be implemented in a clear and precise manner, and must ensure engagement with actual residents, and not just owners or informal landlords. Where appropriate, a formal, binding community engagement agreement should be negotiated with residents establishing when and how the community will be engaged at each stage of the process.

75. The Makhaza community in South Africa was able to rely on a formal agreement reached with the City of Cape Town to successfully reverse the City's decision to refuse to provide enclosures for privacy in newly installed communal toilets.[51]

19. Establish community-based processes for democratic decision-making

76. Participation in upgrading requires democratic processes through which the community can make collective decisions. These processes should facilitate community meetings, the appointment of spokespersons and effective sharing of information.

77. The "people's process" implemented in Kabul ensures community leadership and control over the upgrading process with an organizational structure that engages different levels of government. At the community level, local residents elect community development councils responsible for the selection, design, implementation and maintenance of the projects. At the municipal level, the City trains staff to work alongside residents in implementing and completing upgrading.[52]

78. Participation in upgrading should include engagement with existing community structures and organizations where these are considered by the community to be legitimate and representative.[53]

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[48] South Africa, Development Action Group, Department of Human Settlements and Housing Development Agency, "Participatory action planning for informal settlement upgrading" (2015); and National Upgrading Support Programme, "NUSP resource kit, part 3: building partnerships".

[49] Constitution of Kenya, art. 10(2)(a).

[50] United Nations, guiding principles on extreme poverty and human rights, foundational principles, para. 38.

[51] South Africa, Western Cape High Court, *Beja and Others v. Premier of the Western Cape and Others*, Case No. 21332/10, 29 April 2011.

[52] Haroon Nazire and others, "Effects of informal settlement upgrading in Kabul City, Afghanistan: a case study of Afshar area", *Current Urban Studies*, vol. 4, No. 4 (28 December 2016).

[53] Promoting Legal Empowerment in Informal Settlements: Recommendations and Lessons Learned, International Development Research Centre, Africa-Latin America Partners Workshop, Quito, Ecuador, 26 and 27 March 2018.

20. Ensure access to information and provide resources for community advocates

79. In order to exercise their right to participate, residents must be provided with accessible information regarding the upgrading process, including relevant laws and information about their rights. Advocates, chosen by the community, should be provided with necessary resources so they can advise communities on what is at stake and assist in ensuring effective community oversight.[54] Professionals should be provided with training in community engagement and accountability. Resources and disbursements for expenses should be provided to support the participation of residents.[55] Remuneration should also be available to residents, chosen by the community, who play particular leadership roles.

21. Document the unique profile of each community, linking upgrading to historical struggles for rights

80. Residents of informal settlements should be supported in documenting the history of their settlement. Planners and development partners need to consider informal settlements not only as geographically but also as historically defined communities, considering how and why the site was chosen, what claims have been made by residents and other parties, and how the right to housing is understood by those who live there.[56]

81. Demographic information should be gathered to build a complete picture of the community and the needs of residents, including detailed maps of the settlement, numbers of households and individuals, tenure status (including informal renters), means of livelihood, housing expenditure, service provision status and local governance structures.[57]

82. The Shack Dwellers Federation of Namibia has gone door-to-door to profile the location and history of settlements and their access to services, demographics and organization structures.[58] United Cities and Local Governments, Slum Dwellers International and the Cities Alliance have launched a global campaign, called "Know Your City" whereby city residents themselves collect citywide information regarding informal settlements. To date it has profiled 7,714 settlements in 224 cities.[59]

22. Ensure full inclusion of women in all aspects of upgrading programmes

83. Although women often assume leadership roles within informal communities in relation to housing and social needs, they are frequently excluded from formal engagement with governments and developers. And yet, it is their ability to share their specific experiences and insights that makes their participation vital to successful upgrading. Women and girls must be supported in assuming key leadership roles and equal participation.

84. In the Caracas Slum Upgrading Project, women were offered training on such issues as rights, leadership and domestic violence and took an active role in

[54] Ruth McLeod, "Building effective relationships with the urban poor and government", Comic Relief Literature Review, People Living in Urban Slums International Grants Programme (June 2011).

[55] "Acuerdo por la urbanización de las villas" (see footnote 9).

[56] Promoting Legal Empowerment in Informal Settlements.

[57] National Upgrading Support Programme, "NUSP resource kit, part 1: understanding your informal settlement".

[58] See https://sdfn.weebly.com/background.html.

[59] See http://knowyourcity.info/explore-our-data/.

consultations, construction work and supervising projects, including in paid roles as project staff.[60]

C. Monitoring and access to justice

23. Establish an independent participatory body to monitor progress and hear complaints

85. Proper monitoring of progress and ensuring accountability with regard to goals and timelines is a critical component of rights compliant upgrading. A delegated body or individual, such as an upgrading ombudsperson or community oversight panel should be established to ensure independent, fair and impartial assessment of progress.

86. Complaints procedures should be established to hear directly from residents about problems, ensure respect for their rights and implement rights-based dispute resolution procedures.

87. Monitoring bodies must have access to relevant information and data, disaggregated based on group demographics. They should have resources and capacities to conduct community surveys, monitor activities, meet with residents, staff and managers, and convene public hearings. Reports, recommendations or decisions should be published publicly in accessible formats. All levels of government should be required to respond promptly to recommendations or concerns of monitoring bodies.

24. Guarantee access to justice for human rights claims through community-based adjudication

88. In order to ensure that upgrading plans are implemented in a rights-compliant manner, residents need to be aware of their rights and have avenues through which they are able to claim and enforce them. In many settlements, alternative modalities of justice, including traditional and indigenous practices and community-based mechanisms, are more accessible than formal courts — often operating directly within the communities they serve and adjudicated by local people who hold the trust of residents. Certain issues such as unit allocation or accommodation of disability may be more effectively adjudicated through local procedures.

89. It is essential that informal justice processes are in place to review project design, implementation and outcomes and ensure that all actors — public and private — are held accountable to standards of rights-compliant decision-making.

90. Community-based adjudication of land and housing issues has been used effectively in informal settlements in Ghana and other countries.[61] In Thailand, respected monks have played a role in adjudicating disputes. Justice and Empowerment Initiatives in Nigeria trains and provides resources to community-based paralegals to work directly in their own informal settlements, teaching other residents about their legal rights, assisting in the preparation of legal claims and establishing mediation and negotiation to resolve disputes.[62]

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[60] United Nations Human Settlements Programme, *State of Women in Cities 2012–2013: Gender and the Prosperity of Cities*.

[61] Anthony Arko-Adjei, *Adapting land administration to the institutional framework of customary tenure: the case of peri-urban Ghana* (Amsterdam, Delft University Press, 2011).

[62] Moyosore Arewa, Janelle Deniset and Nicole Gladstone, "Final Capstone report: global experience promoting access to justice, voice and livelihoods in informal urban settlements" (International Development Research Centre, 2017).

25. Take necessary measures to ensure that the judicial system protects the rights of informal settlements

91. Major initiatives are required in all countries to enhance the capacity and commitment of courts, tribunals, human rights institutions, ombudspersons and other bodies to protect and enforce the right to housing of informal settlement residents. Judges, tribunal members and administrative decision-makers should be trained in the right to housing under international and comparative human rights law as it applies to upgrading of informal settlements.

92. Courts and tribunals must rigorously apply the prohibition of forced eviction and uphold the requirement of meaningful engagement with residents. They must hold governments accountable to all components of the obligation to progressively realize the right to housing in informal settlements. They should encourage and hear systemic claims related to, among other things: inadequate budgetary allocations; failure to comply with timelines or to meet agreed upon goals; inadequate engagement or collaboration with communities; and failure to consider the needs of marginalized groups within settlements. Courts and tribunals should be authorized to remain seized of matters and to require regular reports on progress and outcomes until the desired outcome is reached. Alternatively, courts may consider delegating oversight to an independent body such as an ombudsperson or a human rights institution with respect to the implementation of remedial orders.

93. States must make concerted efforts to address barriers to access to justice experienced by informal settlement residents. Measures should include: (a) enabling courts to convene public hearings in locations close to residents so as to reach remote communities;[63] (b) training judges, law clerks and lawyers to work more effectively with informal residents; (c) allocating special funds to law schools to offer courses on legal advocacy in informal settlements; (d) supporting legal advocacy organizations to work with residents; (e) ensuring legal aid is available; (f) establishing procedures for amicus and public interest litigation to address systemic issues; (g) ensuring that national human rights institutions have a mandate and resources to work with residents of informal settlements in claiming and enforcing their right to housing; and (h) providing for early intervention, interim orders and injunctive relief to address urgent circumstances, particularly when forced evictions may occur.

94. In the Philippines, the Alternative Law Group represents a large network of organizations working at the community level to identify barriers in the justice system faced by residents of informal settlements. The Group advocates for systemic change to the justice system by working with law schools, the Supreme Court, the Department of Justice, the Commission on Human Rights, the police and the legal and judicial community.[64]

D. Informal settlements and the environment

26. Assess and respond to environmental risks posed to informal settlements

95. People are frequently driven to live in informal settlements by environmental factors such as natural disasters, climate change and environmental degradation, but the settlements to which they migrate also place them at increased environmental

[63] Jane Weru, Waikwa Wanyoike and Adrian di Giovanni, "Confronting complexity: using action-research to build voice, accountability, and justice in Nairobi's Makuru informal settlements" in J. Wouters and others (eds.), *Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability* (World Bank Legal Review, Vol. 6, 2015).

[64] See http://www.alternativelawgroups.ph/index.php/about-us/partnerships-and-linkages.

risks. Land that is vulnerable to flooding, storm surges, mudslides, earthquakes or other natural disasters, or contaminated with industrial waste, is more likely to be vacant and its use is less likely to be contested by development interests.[65] Without adequate economic, material and technical resources, residents of informal settlements are unable to construct homes that are capable of withstanding harsh weather conditions and disasters.[66] When natural disasters strike, death tolls are vastly higher in informal settlements than they are in formal areas and the health consequences of environmental degradation and pollutants in informal settlements are severe.[67]

96. It is essential that the full scope of all the environmental risks faced by informal settlements be assessed, drawing on the knowledge of inhabitants or experts hired on their behalf, since they are more familiar with the environment in which they live and have often adopted risk management practices.[68]

97. Where settlements exist in areas at risk from natural disasters, States should designate these areas for immediate and effective disaster risk management measures, tailoring approaches to suit the specific needs of the community.[69] States should not, however, use risk management as an excuse for unnecessary displacement. Where relocation and resettlement to a nearby site is necessary for the protection and safety of residents, this should be accomplished through collaboration and agreement, as described above.

98. The Bang Bua settlement in Thailand was prone to flooding from a canal. Officials coordinated with residents to prevent construction in the worst affected areas, improve the structural safety of buildings and provide increased access to the community in times of high water. In 2011 the defences proved able to withstand the widespread flooding following Typhoon Nock-ten and Bang Bua was the least affected settlement in Bangkok.[70]

E. International cooperation and development assistance

27. Ensure that all upgrading projects by international financial institutions and development cooperation agencies adhere to human rights standards

99. International financial institutions and development banks, such as the World Bank and the Asian Infrastructure Investment Bank, play a significant financial and policy role in housing improvement schemes for residents of informal settlements. These actors have gradually shifted away from a slum clearance approach to one that generally supports in situ solutions and participation of affected communities in the design and implementation of urban renewal projects. They do not, however, sufficiently reference the right to adequate housing and its application to upgrading projects.

100. International financial institutions have in recent years also moved away from direct assistance to the poorest households and instead supported mortgage financing

[65] Matthew Abunyewah, Thayaparan Gajendran and Kim Maund, "Profiling informal settlements for disaster risks", 7th International Conference on Building Resilience, 2017.

[66] Submission of Socio-Economic Rights Institute of South Africa for the present report.

[67] See United Nations Office for Disaster Risk Reduction, *Global Assessment Report on Disaster Risk Reduction*, chap. 4 (United Nations, Geneva, 2009).

[68] David Satterthwaite and others, "Responding to climate change in cities and in their informal settlements and economies", International Institute for Environment and Development, March 2018.

[69] Abunyewaha and others, "Profiling informal settlements for disaster risks".

[70] Asian Disaster Preparedness Center, *Integrating Disaster Risk Management into Urban Management* (Bangkok, Disaster Risk Management Practitioners Handbook Series, 2013).

for homeownership. This approach has been shown to deny benefits to the residents of informal settlements who most need assistance.[71]

101. The Special Rapporteur continues to hear that residents are not meaningful engaged in upgrading and that safeguards provided by international financial institutions and development banks are ignored in favour of weak domestic processes. Complaint mechanisms rarely require or ensure compliance with the right to housing, vary in terms of accessibility and independence and have generally produced disappointing results as far as ensuring effective remedies for complainants.[72]

102. Many development cooperation agencies have failed to adopt human rights compliant safeguards and approaches and few explicitly reference the right to housing. The result has been that resettlement and compensation schemes are often insufficient or not adhered to by implementing partners.[73]

103. Development agencies should only fund and implement informal settlement improvement projects if they are undertaken in strict compliance with international human rights law and principles, as elucidated in these recommendations. Funding to governments must be made contingent on compliance with these human rights standards and procedures should be in place ensure immediate responses from governments when human rights are threatened.

104. International financial institutions and development agencies should review programmes to ensure that a focus on mortgage financing does not deny benefits to those most in need. A robust and timely complaints mechanism for any upgrading project must be accessible to all residents for a review of any decision taken that may be contrary to their human rights.

F. Violence and crime

28. Recognize informal settlement residents engaged in claiming the right to housing as human rights defenders

105. It is unfortunately common for police, security forces and other hired personnel to use force and violence, including with weapons, when informal settlement residents resist forced eviction or are otherwise claiming their right to housing through protest.[74]

106. Those who resist forced eviction and claim their right to housing must be treated as human rights defenders by government authorities and security forces and the international community should respond accordingly when their rights are violated. If police or security personnel are required to use force for other reasons, the principles of necessity and proportionality need to be respected and they must conduct their operations in line with human rights standards, respecting and protecting the rights of informal settlement residents and their property.[75] Where excessive force is

[71] Clegg, "The World Bank and the globalisation of housing finance".

[72] C. Daniel and others (eds.) *Glass Half Full? The State of Accountability in Development Finance* (Amsterdam, Centre for Research on Multinational Corporations, January 2016). Available at www.glass-half-full.org.

[73] See World Bank/Organization for Economic Cooperation and Development, *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges*, 2nd ed. (Washington, D.C., 2013).

[74] Nation Nyoka and Dennis Webster, "Metro police fire rubber bullets at residents in Ekurhuleni's Good Hope settlement", *Daily Maverick*, 18 May 2018; Amnesty International, "'Just move them': forced evictions in Port Harcourt, Nigeria", 28 October 2010; Dom Phillips and Júlio Carvalho, "Police operation in Rio favela leaves at least eight people dead", *The Guardian*, 25 March 2018.

[75] Guidelines on development-based evictions, paras. 47–51.

used against informal settlement residents, the situation must be referred to an independent and impartial panel for investigation and remedy.[76]

29. Investigate and prevent violence against women and girls

107. Women and girls living in informal settlements are at much greater risk of experiencing gender-based violence than the general female population.[77] Toilets, water and other services are often located at some distance from homes, and insecure houses and lack of electricity and resultant dark walkways put women and girls at increased risk of violence and sexual assault.[78] Extreme poverty, destitution, overcrowding and long-term unemployment are contributing factors to violence against women. Women rarely have access to emergency shelters for protection from domestic violence in informal settlements.

108. Women should be involved in identifying and immediately implementing priority measures to address violence and to ensure that all upgrading addresses their safety and security risks.

109. Procedures must also be implemented to provide support for women reporting violence and sexual assault, so as to ensure their safety, including the provision of emergency shelters.

30. Ensure adequate protection of informal settlement inhabitants from hate-based crime

110. People living in informal settlements are often subjected to terrible acts of violence on the basis of their perceived membership in a particular racial, social, cultural or religious group. Hate-based attacks have led to the destruction of homes and property, physical injuries and death.[79] Police and security forces often fail to adequately protect residents and may serve to perpetuate hatred as a result of their own discriminatory stereotypes.[80]

111. Police and security forces must receive human rights training and education to address discriminatory stereotypes and authorities must work in conjunction with residents to implement effective responses to hate-based crime.

G. Business and human rights

31. Redirect private investment in housing and real estate to support upgrading and create affordable housing

112. It is clear that the Sustainable Development Goals cannot be met by Governments alone and that private investment will play a significant role. It has been estimated that to build all of the needed housing over the next decade would cost up

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[76] See Stuart Casey-Maslen, *Use of Force in Law Enforcement and the Right to Life: the Role of the Human Rights Committee*, Academy In-brief No. 6 (Academy of International Humanitarian Law and Human Rights, Geneva, November 2016).

[77] Elizabeth Swart, "Gender-based violence in a Kenyan slum: creating local, woman-centered interventions", vol. 38, No. 4, *Journal of Social Service Research* (April 2012).

[78] Submission of Socio-Economic Rights Institute of South Africa for the present report.

[79] Office of the United Nations High Commissioner for Human Rights, "Ukraine: Act now to stop systematic persecution of Roma minority in 'alarming' attacks, say UN experts", 28 July 2018; "Ukraine's Roma under attack in wave of hate crimes, *The Express Tribune*, 1 July 2018; submission of Associazione 21 Luglio Onlus for the present report.

[80] Report of the "Dialogue on human rights and policing", hosted by the African Policing Civilian Oversight Forum in cooperation with the South African Human Rights Commission, 28 and 29 April 2016.

to $16 trillion in spending on land and construction, of which only $3 trillion would be expected to come from public funding.[81]

113. In her previous report on the financialization of housing, the Special Rapporteur noted that current financial regimes and investment patterns in housing have created unaccountable markets that fail to address housing need, increasingly driving lower income households in cities into homelessness and informality (A/HRC/34/51, paras. 3 and 29). She has called for a radical shift to redesign housing markets and investment centred on the recognition of housing as a human right and a social good rather than a commodity.[82]

114. It is essential, therefore, that private investment be better directed to meeting the needs of the quarter of the population of cities living in informal settlements. This means adopting a new commitment to human rights responsibilities within the residential housing and construction sectors. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, requiring that investors avoid any activity that results in displacement of communities or the destruction of habitat, must be applied to ensure that a reasonable component of any private development and investment in land or housing is directed towards the housing needs in informal settlements. A global initiative, led by States and international financial institutions, is required to provide reliable mechanisms for capital investment in upgrading, directed by communities themselves.

III. The way forward

115. **The numbers of people living in informal settlements, the resources required for upgrading and the level of deprivation of rights experienced among the residents make the goal of upgrading all settlements by 2030 daunting. The tables of indicators and statistics compiled for monitoring progress towards 2030 are somewhat overwhelming. But more is required than a commitment to improved numbers and statistical trends.**

116. **The recommendations above are oriented around two key themes that are the pillars of human rights-based approaches to upgrading. First, that upgrading must build on, rather than undermine, the capacities of communities to claim and realize their rights, with adequate support and resources from States, international organizations and redirected private sector investment. And second, that the obligation to address the systemic violations of the right to housing in informal settlements must be recognized as a human rights imperative of States around the world for which there must be accountability.**

117. **Underlying these two key themes is one simple truth — something that is clear to the Special Rapporteur every time she visits residents living in appalling conditions in informal settlements in the midst of or on the margins of thriving cities where commercial and luxury residential developments abound. That truth is that by any measure — moral, political or legal — it is unacceptable for people to be forced to live this way. Refusing to accept the unacceptable is where we must begin. All actors must mobilize within a shared human rights paradigm around the imperative of upgrading all informal settlements by 2030.**

[81] Jonathan Woetzel and others, "A blueprint for addressing the global affordable housing challenge" (McKinsey Global Institute, October 2014).

[82] See http://www.unhousingrapp.org/the-shift/.

United Nations A/73/310/Rev.1

General Assembly

Distr.: General
19 September 2018

Original: English

Seventy-third session
Item 74 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submitted pursuant to Human Rights Council resolutions 15/8 and 34/9.

* A/73/150.

18-15515 (E) 210918

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

In the present report, the Special Rapporteur examines the issue of the right to housing for residents of informal settlements and the commitment made by States to upgrade such settlements by 2030. Nearly one quarter of the world's urban population lives in informal settlements or encampments, most in developing countries but increasingly also in the most affluent. Living conditions are shocking and intolerable. Residents often live without water and sanitation, and are in constant fear of eviction.

Past approaches have been premised on the idea of eliminating "slums", often resorting to evictions and relocating residents to remote locations on the outskirts of cities. The present report proposes a very different, rights-based approach that builds upon informal settlement communities and their inherent capacities. It understands informality as resulting from systemic exclusion and advances a set of recommendations for supporting and enabling residents to become full participants in upgrading. The recommendations have their basis in international human rights obligations, particularly those flowing from the right to housing, and cover a number of areas, including the right to participation, access to justice, international cooperation and development assistance, environmental concerns, and business and human rights.

The report reaches some simple but urgent conclusions: the scope and severity of the living conditions in informal settlements make this one of the most pervasive violations of human rights globally. The world has come to accept the unacceptable. It is a human rights imperative that informal settlements be upgraded to meet basic standards of human dignity. Recognizing this, and mobilizing all actors within a shared human rights paradigm, can make the 2030 upgrading agenda achievable.

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I. The right to housing and informal settlements

A. The Sustainable Development Goals imperative: upgrade informal settlements by 2030

1. Nearly one quarter of the world's urban population, 883 million people, live in informal settlements; 520 million of these people are in Asia. In sub-Saharan Africa, over half of city dwellers live in informal settlements; in Latin America and the Caribbean the estimate is 21 per cent.[1] Conditions in these settlements are often inhumane. Many residents live in overcrowded, insecure dwellings, without water and sanitation, fearful of eviction and subject to preventable life-threatening illnesses.

2. States have committed to taking action. Goal 11 of the 2030 Agenda for Sustainable Development commits States to "upgrade slums" by 2030. This is attached to the broader commitment to ensure access for all to "adequate, safe and affordable housing" by 2030.

3. This is a tall order, to say the least. The aim of the present report is to provide concrete guidance on how to draw on human rights-based approaches that have proven successful, building on the capacities of residents of informal settlements to direct and manage upgrading processes. Rather than criminalizing residents of informal settlements, the proposed approach recognizes and supports them as rights claimants. The report provides a set of recommendations developed with input from residents of informal settlements, experts and responses to a questionnaire from governments, non-governmental organizations, national human rights institutions and international financial institutions, as well as through information gathered by the Special Rapporteur during country visits. They are grounded in applicable international human rights standards.[2]

B. Informal settlements or "slums"?

4. While Agenda 2030 refers to "slums", the Special Rapporteur prefers the term "informal settlements" as one that is more in keeping with a human rights-based approach to housing. The term "slum" is often considered pejorative and stigmatizing and has generally led to bad policy: "slums" are often viewed as a problem requiring "clearance", rather than as communities to be supported.[3] Households reported by governments as having been "upgraded" have often been warehoused in housing blocks devoid of dignity, culture or community, or displaced to outlying urban wastelands with no access to work, social ties, transportation or services.

5. The present report proposes a radically different approach centred on the right to housing. It understands that informality is created and exacerbated by the imposition of a particular system of laws, private markets, planning and resource allocation that neglects and violates the fundamental rights of those who have no choice but to rely on informal settlements. Colonizing systems of land and property

[1] United Nations, *The Sustainable Development Goals Report 2018* (New York, 2018) p. 24; and report of the Secretary-General on progress towards the Sustainable Development Goals (E/2018/64, statistical annex, p. 83).

[2] Officials and development actors involved in upgrading of informal settlements should also be aware of and apply the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I) and the guiding principles on security of tenure for the urban poor (A/HRC/25/54), and fully comply with them in their planning and project implementation.

[3] For a discussion of terminology, see United Nations Conference on Housing and Sustainable Urban Development (Habitat III), issue paper No. 22, "Informal settlements" (31 May 2015).

have been imposed on indigenous peoples' relationships to land and housing. In developing countries, large segments of the population are deemed illegal when housing themselves in the best manner they can and live under constant threat of forced removal from their homes. In affluent countries, the law not only prevents the construction of rudimentary shelter by those who are homeless, it criminalizes them, sometimes even for eating and sleeping.

6. Informality is a response to exclusionary formal systems. Those who migrate to cities for work or who are displaced from other neighbourhoods must create, through informal settlements, a subsidiary housing system to meet urgent needs that the formal housing system has failed to meet. Land at the margins of cities is often first settled informally, with informal businesses arising to respond to needs for water, sanitation, electricity, transportation, food, clothing and other necessities. These settlements provide necessary housing for the labourers and service providers on whom cities rely, yet they are criminalized, denied services, face widespread discrimination and are forced to pay exorbitant prices for basic necessities or go without.

7. Informal settlements range from constantly displaced homeless encampments in the most affluent countries,[4] to massive communities in the global South, such as Orangi Town, in Karachi, Pakistan, with an estimated 2.4 million inhabitants.[5] Modalities include squats in abandoned buildings, improvised homes in containers, tents or boats or shacks made of whatever materials can be scavenged. Elsewhere, long established informal communities may consist of durable housing of bricks and mortar. Unregulated and often exploitative informal rental markets constitute a growing component of informal housing.

8. Residents of informal settlements affirm humanity in the most inhumane circumstances. The Special Rapporteur has visited many informal settlements in the global North and South. She has found the severity of the living conditions and the failure of States to respond to them profoundly disturbing.

9. In a large informal settlement in Mumbai, India, the Rapporteur saw a rodent infestation caused by a lack of waste removal. She met children playing on garbage heaps as if they were trampolines in a Roma settlement in Belgrade. She visited residents in overcrowded shacks in Mexico City stretching alongside a functioning railway line. She experienced complete darkness — during the daytime — in the homes of persons of African descent who had no access to electricity living just outside of Lisbon. She saw children with disabilities languishing alone in the back of homes in settlements in Cabo Verde. She visited migrants in Santiago living in damp abandoned buildings with live electrical wires exposed. She has sat with people in homeless encampments under highway bypasses and on pavements in California and in Delhi, India, with no access to toilets or showers and constantly fearing being "cleaned" off the streets. In Buenos Aires, she toured an unrecognized settlement to which police and ambulances refuse services. In Seoul she met with residents living amid rubble, in half-demolished homes on the site of violent forced evictions — surrounded by skyscrapers. In Indonesia and the Philippines, she visited informal communities in flood prone areas, fearful of being evicted and forced to move away from their homes and communities.

10. And yet, despite these disastrous outcomes of imposed informality, residents express a strong sense of community and home. Streets are named, houses numbered, residents' associations formed, community centres and schools built, social

[4] See National Law Center on Homelessness and Poverty, "Tent city, USA: the growth of America's homeless encampments and how communities are responding" (2017).

[5] Tabrez Uz Zaman, H.D. Goswami and Yamin Hassan, "The impact of growth and development of slums on the health status and health awareness of slum dwellers", *International Journal of Medical Research and Health Sciences*, vol. 7, No. 3 (2018), p. 56.

programmes instituted and shops and services established. In fact, for all their informality, these settlements are critical components of the economies of most major cities and are a main provider of housing in the global South and economies in transition.

C. Understanding informal settlements as both rights violations and as rights claims

11. From a human rights perspective, informal settlements have a dual nature. On the one hand, they are systemic human rights violations, the effects of State actions, inaction and policies that deprive millions of their fundamental human rights.

12. A State is in violation of international human rights law if any significant portion of the population is deprived of access to basic shelter or housing. States are obliged to adopt "enabling strategies" to implement the right to housing for residents of informal settlements within the shortest possible time, by all appropriate means, using the maximum of available resources.[6] It is obvious that most States are in clear non-compliance with this obligation. Indeed, the scope and severity of the living conditions in informal settlements make them one of the most pervasive violations of the human rights of dignity, security, health and life worldwide. It is critical that they be recognized as such.

13. On the other hand, informal settlements are often an incredible accomplishment, a profound expression of individuals, families and communities claiming their place and their right to housing. They are "habitats made by people", who are creating homes, culture and community life in the most adverse circumstances.[7] The act of claiming places in cities and constructing homes challenges spatial exclusion, the appropriation of land and property by the wealthy for no purpose but speculation, the colonization of indigenous territories and attempts by authorities to render entire communities invisible by not recognizing them. In response, informal settlements are a statement: "we are here" and "we will not disappear". They are a form of grass-roots human rights practice led by those excluded from housing, women, those who experience the effects of economic inequality, people with disabilities, migrants, and those facing racial and ethnic discrimination. It is within this dual recognition of informality as rights violating and rights claiming that a rights-based approach must be grounded.

14. A human rights-based approach to informal settlement upgrading, based on the right to remain in situ where possible, and to be adequately housed nearby when relocation is necessary or preferred, is an essential component of a broader commitment to bringing human rights to cities, and to the new urban agenda of sustainable inclusive development. An integrated human rights approach, as proposed in the present report, focuses on securing adequate housing, in all of its dimensions, as a response to structural conditions and societal dynamics that deprive residents of the right to housing, with a view to enabling communities to define, for themselves, what constitutes a home that provides dignity and security.

15. The following recommendations for rights-based upgrading have been fashioned to assist in the implementation of the 2030 Agenda for Sustainable Development and the New Urban Agenda by harnessing the potential of a human

[6] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, para. 10, and general comment No. 4 (1991) on the right to adequate housing, para. 14.

[7] Lorena Zárate, "They are not 'informal settlements' — they are habitats made by people", The Nature of Cities, 26 April 2016.

rights-based approach. They demand a significant shift in the relationship between governments and informal communities from one in which governments criminalize, penalize and obstruct the process of claiming the right to housing within informal settlements, to one in which this process is community led and enabled through new approaches to ownership, tenure, inclusive planning, innovative legislative and programmatic initiatives, and rights-based participation and accountability. The recommendations should inform the actions of all levels of government, development agencies, non-governmental organizations and private actors involved in upgrading of informal settlements.

II. Recommendations for rights-based upgrading of informal settlements

A. Core principles of rights-based upgrading

1. Require that upgrading programmes comply with the right to adequate housing

16. The overriding objective for informal settlement upgrading should be the full enjoyment of the right to adequate housing. Upgrading policies, programmes and strategies should incorporate each of the principles for human rights-based housing strategies described in the report of the Special Rapporteur to the Human Rights Council contained in document A/HRC/37/53.

17. Effective and accessible procedures must be established to ensure that residents can hold governments and other actors accountable for all aspects of the right to housing, including the positive obligations to apply the "maximum" of "available resources" and "all appropriate means" to address the conditions in which people in informal settlements live.[8]

18. Decision-making at all levels of government, as well as within development agencies and international financial institutions, must be held accountable to this standard.

19. Residents of informal settlements must be provided with information about the right to housing. It is helpful if declarations or principles based on the right to housing are adopted and applied to all aspects of upgrading. An agreement concerning urbanization of informal settlements adopted by the Asociación Civil por la Igualdad y la Justicia affirms 10 key upgrading principles based on the right to housing and offers a good example.[9]

20. The Kenya National Commission on Human Rights was engaged through a court order to oversee the allocation of upgraded units to the residents of Kibera Soweto East. The Commission reports that it has adopted the values and principles of a human rights-based approach, rooted in constitutional provisions requiring that state organs and persons respect the rule of law, participation of the people, human dignity, human rights, equity, social justice, non-discrimination, integrity, transparency and accountability.[10]

[8] International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1; and Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 14.

[9] "Acuerdo por la urbanización de las villas", available at http://acuerdoporlaurbanizacion.org/wp-content/uploads/2016/10/AcuerdoxlaUrbanizacion-1.pdf (Spanish only).

[10] Submission of the Kenya National Commission on Human Rights for the present report.

2. Address all of the components of the right to housing in an integrated fashion, recognizing the links between housing and other social rights

21. As an end goal, upgrading schemes must fulfil all aspects of the right to adequate housing under international human rights law. This includes living without discrimination, in security, peace and dignity, in housing with secure tenure, that is affordable, habitable, culturally adequate, in a decent location, accessible, and where services are available.[11] These requirements should be refined by communities and households themselves to address different contexts.

22. Programmes to address particular components of the right to adequate housing, such as securing formal title or providing access to water or sanitation infrastructure, should not be implemented in isolation from, or at the expense of, other adequacy dimensions. For example, fees charged for sanitation or water may compromise the ability to remain in housing. Creating secure formal title may give rise to speculation and erode affordability, leading to the displacement of the poorest residents. Upgrading must begin by surveying and accurately identifying the housing, social, economic, health, educational and other needs of residents. A holistic approach, addressing this wide range of needs, should be adopted in all upgrading strategies.

3. Recognize the links between adequate housing and access to livelihood in the informal economy and support community economic development

23. The struggle for a livelihood dominates everyday life for residents of informal settlements. Unregulated markets and lack of rule of law can lead to exploitation and further economic hardship. Many must pay significant amounts to private operators for transportation from the settlement to work or school. Residents are often denied access to water and sanitation by unaffordable fees and access to essential services may be ruled by cartels. Ensuring access to water and toilets and other necessities, regardless of residents' ability to pay, is an immediate priority in upgrading.

24. It must also be recognized that many residents rely on informal economic activity carried out from home to survive, whether they be hairstylists, shop or cafe owners, mechanics, or recyclers. Informal residents must be able to ensure that the location and design of upgraded housing supports their means of livelihood.

25. In Delhi, India, the Kathputli Colony, made up of street performers (musicians, puppeteers, magicians and others) relied on spaces within their informal settlement to perform, but were relocated to apartment blocks. They had unsuccessfully challenged the relocation in court, asking for an assurance that the project would be executed in such a manner that sufficient space would be made available for them to undertake the unique character of their vocation and display their skills for earning a livelihood.[12]

4. Recognize the right to remain in situ

26. The right to remain in one's home and community is central to the right to housing.

27. In situ upgrading allows residents to retain their connections to their locality, protects social cohesion and can help to avoid disrupting livelihoods.[13] Relocation, in contrast, has many possible negative consequences and often results in a poorer

[11] Committee on Economic, Social and Cultural Rights, general comment No. 4.

[12] High Court of Delhi, Bhule Bisre Kalakar Co-Operative Industrial Production Society Ltd. and Others v. Union of India and Others, W.P.(C) 1290/2014 and CM APPL. 3834/2014, 30 March 2014, para. 5. Available at www.kathputlicolonydda.com/pdfs/Judgement-dated-20.03.2014.pdf.

[13] See guiding principles on security of tenure.

quality of life. It has particularly negative repercussions for people with disabilities, the elderly, and children and young people. As Youth for Unity and Voluntary Action has demonstrated in India in its collaboration with Leher on the #UprootedChildhoods campaign, the effects of displacement and relocation on children include disrupted schooling and social networks and often the loss of safe spaces to play.[14]

28. The right to in situ upgrading must be recognized in law and communities should be provided with representation to seek enforcement of this right. Barrio Rodrigo Bueno in Buenos Aires, visited by the Special Rapporteur in 2016, has been successful in this respect. Situated in the midst of commercial and luxury residential developments, the community successfully contested applications for eviction and won the right to in situ upgrading.[15] Legislation has recently been enacted which provides for the upgrading of the community with ongoing communication with and collaboration of residents.[16]

5. Rely on meaningful engagement and cease the use of eviction procedures

29. States should immediately cease and desist from seeking to justify evictions of residents of informal settlements under domestic legal procedures. Courts should refuse to authorize such evictions in any but the most exceptional circumstances, and only when residents have been fully engaged in the process, when alternative housing of comparable or better quality is being provided and when all other requirements of international human rights have been honoured. Applications to evict are almost always indicative of flawed processes and lack of meaningful engagement with communities.

30. The approach taken by the South African courts moves in the right direction and should be applied by other courts. In the *Melani* case, the Slovo Park informal settlement challenged the decision of the City of Johannesburg not to apply for in situ upgrading and instead to relocate the community to an alternative location 11 km away.[17] The court held that the Government's upgrading policy, as required by the constitutional right to housing, envisages "a holistic development approach with minimum disruption or distortion of existing fragile community networks and support structures and encourages engagement between local authorities and residents living within informal settlements".[18] Relocation must be "the exception and not the rule" and any relocation must be to a location "as close as possible to the existing settlement".[19] On this basis, the City was ordered to reverse the decision to relocate the community and apply for funding for in situ upgrading.[20]

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[14] See http://leher.org/campaigns/uprootedchildhoods/.

[15] See the work of the Centro de Estudios Legales y Sociales at www.cels.org.ar/web/2015/04/amicus-por-el-barrio-rodrigo-bueno/.

[16] Argentina, *Rodrigo Bueno urbanization law*, No. 5798 (23 March 2017), available at http://www2.cedom.gob.ar/es/legislacion/normas/leyes/ley5798.html. Proposals to designate the community land as public so as to avoid inflationary pressures were not, however, incorporated into the legislation (see Asociación Civil por la Igualdad y la Justicia, supplementary document concerning land management policies for redevelopment of informal settlements, available at www.acuerdoporlaurbanizacion.org/#complementario (Spanish only).

[17] High Court of South Africa, *Mohau Melani and Others v. City of Johannesburg and Others*, Case No. 02752/2014, 22 March 2016.

[18] Ibid., para. 34.

[19] Ibid., para. 35.

[20] Ibid., Order, paras. 1 and 2.

6. Where relocation is necessary or preferred, ensure compliance with the right to housing and all other human rights standards

31. Sometimes upgrading requires relocation and resettlement because of hazardous or dangerous conditions that cannot be mitigated, or relocation may be chosen by communities for other reasons. In these cases, all affected groups and households must be allowed to participate in the decisions regarding relocation, including the geographic site, the timing of relocation and the allocation and design of the new housing.

32. Where the government proposes relocation, the burden of proof is on the State to show why in situ upgrading is unfeasible. Authorities must publish and disseminate their reasoning to the community and allow it to be reviewed by a body capable of reversing the decision to relocate, providing a full hearing to residents.

33. Where most residents of a community prefer relocation but some do not consent, those residents, where possible, should be allowed to remain. Where temporary relocation is required for in situ upgrading, this must be time-limited and meet adequacy and all human rights standards.

34. In any instance of relocation, whether temporary or permanent, or from public or private land,[21] States must comply with the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I). These require, in particular, that relocation sites should be located in the vicinity of the original site, have access to all necessary amenities (particularly water, sanitation and electricity) and maintain access to livelihoods. Authorities must provide full and adequate real and personal compensation for any costs.[22] Relocation sites must provide land and housing to residents that are of equal or better size and quality as that which they left (ibid.).

35. In Dakar, informal settlement dwellers had to be relocated to make way for a new road. Residents identified as their central needs access to basic infrastructure, preventing flooding and obtaining secure tenure. All of these needs were met. The cost of land in the resettlement site was adjusted based on household means, with the most vulnerable obtaining title without cost. Business owners were compensated for loss of revenue, homeowners were offered cash compensation or a free house and renters were given six months' free rent.[23]

7. Prohibit any forced eviction and recognize a wide range of tenure systems

36. The right to a secure home is a universal right under international human rights law. Lack of security of tenure can never justify forced evictions of those residing in informal settlements. Security of tenure under domestic law should not, therefore, be restricted to those with formal title or contractual rights to their land or housing. As noted by the previous Special Rapporteur in the guiding principles on security of tenure (A/HRC/25/54, para. 5), security of tenure should be understood broadly as "a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one's home in security, peace and dignity". In order to protect the security of home in all circumstances, States must promote, protect and strengthen a variety of tenure forms.

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[21] See, for example, Constitutional Court of South Africa, *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd and Another*, Case No. CCT 37/11, 1 December 2011, para. 95.

[22] See submission of Afghanistan Independent Human Rights Commission for the present report.

[23] Pierre Graftieaux, "Moving people to help people move", *Transportation Research Procedia*, Vol. 27 (2017).

Tenure arrangements of the most vulnerable and marginalized should be accorded priority (ibid.).

37. Communities should be supported in collecting and documenting understandings of informal tenure status through enumerations and tenure registration, with a view to ensuring long-term security. Administrative processes aimed at facilitating the regularization of informal settlements must be affordable, accessible, timely and not overly complex.

38. Namibia has informed the Special Rapporteur that the Flexible Land Tenure Act of 2012 provided for more planning, servicing and ownership of land in informal settlements in order to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title; to provide security of title for persons who live in informal settlements or who are provided with low income housing; and to empower the persons concerned economically by means of these rights.[24]

8. Revise laws to recognize informal settlements and adopt inclusionary planning and zoning

39. Planning and zoning should never be used to justify unwarranted demolition of informal settlements, to deny access to services or to prevent relocation to proximate lands. In Lagos, Nigeria, the Urban and Regional Planning and Development Law of 2010 retroactively granted powers to authorities to seal up and demolish structures that contravened Lagos planning laws, resulting in the demolition of the informal settlement of Makoko, which housed approximately 85,000 people.[25]

40. Planning and zoning often serve to benefit more affluent communities, investors and development interests at the expense of those in need of housing. Planning must prioritize the allocation of appropriate land, services and zoning for residential housing close to services, employment and transportation and extend services and transportation to areas where informal settlements are located. In Medellin, Colombia, inclusionary planning included urban escalators and cable cars connecting informal neighbourhoods to central nodes of the city, leading to revitalization and successful upgrading.[26]

41. No urban development proposals should be approved if they fail to include housing for those already living in the area being developed. Any development must provide existing residents with housing that fully meets their needs, in terms of affordability, design and adequacy.

9. Provide access to serviced land and economical building materials

42. Where it is not possible to provide new arrivals to cities with built housing, land should be set aside or acquired for housing those in need, with water and sanitation facilities and temporary shelter available while houses are built on allocated plots. Tax incentives should be implemented to encourage private owners to make vacant land available for housing.

43. Economical materials should be provided for self-construction of homes. Innovations Housing, a non-governmental organization working in East Africa, has

[24] Submission of Namibia for the present report.

[25] Akinola E Akintayo, "Planning law versus the right of the poor to adequate housing: a progressive assessment of the Lagos state of Nigeria's Urban and Regional Planning and Development Law of 2010", *African Human Rights Law Journal*, vol. 14, No. 2 (2014).

[26] Luisa Sotomayor, "Medellin: the new celebrity?" Spatial Planning in Latin America, 26 August 2013.

supported social enterprises to develop economical building materials such as "soil bricks".[27]

10. Combat and prohibit discrimination and harassment against informal settlement residents and cease punitive denials of access to basic services

44. People living in informal settlements face widespread discrimination and harassment on the basis of their housing status. This includes harassment of residents, bullying of children in schools, denial of access to credit, basic services, social programmes, public transportation, health care and education, and arrest and incarceration of community leaders. Residents are also frequently denied social support and employment for lack of a formal address.

45. In Canada, local authorities used tactics that included spreading chicken manure and fish fertilizer on an encampment, to enforce a by-law prohibiting overnight shelters in parks. Residents mobilized and the by-law was subsequently found by a court to violate constitutional rights to life, liberty and security of the person of residents of the encampment.[28]

46. Attempting to discourage residents from remaining in informal settlements or encampments by denying access to water, sanitation and health services and other basic necessities, as has been witnessed by the Special Rapporteur in San Francisco and Oakland, California, United States of America,[29] constitutes cruel and inhuman treatment and is a violation of multiple human rights, including the rights to life, housing, health and water and sanitation. Such punitive policies must be prohibited in law and immediately ceased.[30] Following expressions of concern from the Human Rights Committee, the United States federal Government introduced funding incentives for municipalities to rescind by-laws that criminalize homelessness.[31] More robust measures, however, are required.

47. States must adopt measures to ensure that discrimination, harassment or criminalization on the basis of tenure or housing status is prohibited in all areas and human rights institutions should address this form of discrimination.[32]

11. Recognize diverse household circumstances and address needs of marginalized groups

48. Upgrading programmes must ensure that the unique needs and different experiences of women, persons with disabilities, migrants, non-citizens, the elderly, children and other marginalized groups are recognized and addressed.

49. The unique needs of women and girls, including vulnerability to violence and sexual assault, discussed below, must always be a priority. Consideration must also be given to practical needs related to menstruation and societal perceptions of privacy and expectations of modesty. A woman in the Mukuru settlement in Nairobi explained: "During my monthly period I can't urinate in the tin so I have to wait until

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[27] See Innovations Housing website (http://innovationshousing.com/projects/africa.htm).

[28] Supreme Court of British Columbia, *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, 21 October 2015.

[29] Darwin Bond Graham, "United Nations expert describes Oakland and California's homeless crisis as 'cruel'", *East Bay Express*, 21 January 2018.

[30] See concluding observations of the Human Rights Committee on the fourth periodic report of the United States of America (CCPR/C/USA/CO/4, para. 19) and https://wraphome.org/what/homeless-bill-of-rights/california-right-to-rest-act/.

[31] National Law Center on Homelessness and Poverty, "The cost of criminalizing homelessness just went up by $1.9 billion", press release, 18 September 2015, available at www.nlchp.org/press_releases/2015.09.18_HUD_NOFA_criminalization.

[32] Guiding principles on security of tenure (A/HRC/25/54, para. 5), paras. 10 and 50–59.

morning. Because sometimes some drops of blood can remain in the tin and everyone uses the tin so it's embarrassing".[33]

50. For persons with mobility impairments, toilets are difficult to reach when offered on a communal basis and are rarely accessible, leaving persons with disabilities to manage within their homes.[34]

51. Upgrading programmes must be culturally sensitive. This requires attention to spatial planning, colour, size of units, facilities and diverse religious customs. Upgrading indigenous settlements must ensure that indigenous people themselves are actively involved in developing their housing, drawing on their knowledge and practices.[35] While visiting Mexico City, the Special Rapporteur was struck by the contrast between government designed housing lacking in cultural influence and an urban upgrading project designed by indigenous residents which incorporated indigenous art, a sweat lodge, a gathering space and social enterprises.[36]

12. Ensure adequate budgeting and resource allocation with the input and oversight of residents

52. Ensuring adequate budgetary allocations to address housing needs in informal settlements is a central human rights obligation of States. To date, the international community, domestic courts and human rights bodies have failed to adequately hold States accountable to the obligation under international human rights law to apply the maximum of available resources to upgrading informal settlements. States must ensure that public expenditure is sufficient to meet commitments in the 2030 Agenda while also adopting taxation measures, to discourage investors from leaving land and property vacant for speculative purposes and to address growing disparities in wealth and income.

53. Governments frequently subsidize housing, infrastructure and commercial projects in formal areas that primarily benefit wealthy and middle-class populations, while denying subsidies to the residents of informal settlements. States must review budgetary measures to ensure that subsidies are directed to those most in need.

54. Budgeting and resource allocation for upgrading must be subject to transparency, accountability and effective oversight by affected residents.

55. In the Saeng Mook Da settlement in Thailand, the government informs community leaders when funding for construction and upgrading work is available. Community members then convene and make collective decisions regarding allocations with particular attention to those without sufficient means as beneficiaries. A community committee reviews all decisions on allocation of funds.[37]

13. Ensure a non-discriminatory human rights-based approach to credit and microfinance

56. Upgrading programmes too often rely on financing of home ownership through mortgage subsidies, even though 60 to 80 per cent of those in need of housing cannot

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[33] Extract from story prepared by Edith Kalela of the Muungano wa Wanavijiji/Akiba Mashinani Trust, on file with the authors; see further Inga T. Winkler and Virginia Roaf, "Taking the bloody linen out of the closet: menstrual hygiene as a priority for achieving gender equality", *Cardozo Journal of Law and Gender*, vol. 21, No. 1 (2015).

[34] See submission of Kenya for the present report.

[35] See United Nations Declaration on the Rights of Indigenous Peoples, arts. 23 and 24.

[36] See the work of the Habitat International Coalition (www.hic-gs.org/).

[37] Nausica Castanas and others, "Leave no one behind: community driven urban development in Thailand", working paper (London, International Institute for Environment and Development, December 2016).

qualify for them.[38] In sub-Saharan Africa, only about 3 per cent of households have access to mortgages from the formal financial system.[39]

57. Microfinance may be a preferred option, as it can be tailored to incremental building of housing and upgrading, is not secured through a lien on one's home and does not require land title.

58. In Tajikistan, a microfinance scheme implemented by the local Habitat for Humanity in coordination with domestic microfinance firms assisted more than 112,000 people to improve their living conditions through microfinance loans.[40]

59. Although microfinance is targeted at poorer individuals and households, selection is usually based on perceived credit risk rather than need. Interest rates tend to be higher than in mainstream financial institutions. Monitoring of the microfinance sector, with participation by affected communities, must be undertaken to ensure accountability and accessibility for those most in need.

60. Measures should also be taken to prevent banks and other financial institutions from unreasonably refusing to offer credit to informal settlement residents. Assessing credit worthiness on alternative bases so as not to exclude informal households is a human rights obligation and good business practice.

61. Credit provision, however, is too often advanced as the sole strategy to ensure access to housing. Such initiatives should be regarded as additional to, and not in lieu of, direct government investment in upgrading.[41]

14. Integrate the skills and labour capital of residents into upgrading programmes

62. Upgrading programmes require the employment of large numbers of people in numerous skilled and manual roles. Upgrading projects should employ local residents and pay fair remuneration. The input and expertise of community members should be drawn upon with respect to land and materials acquisition, building design, construction and other areas.

63. In Hanna Nasif, in the United Republic of Tanzania, community members who wished to participate were trained in construction and other areas. The skills gained through the programme increased their employability and income.[42]

15. Address inflationary effects of upgrading and combat speculation

64. In situ upgrading of settlements can attract middle-income households and drive up housing prices, which in turn leads to displacement of residents from their upgraded communities.

65. Following an upgrading programme in Dar es Salaam, United Republic of Tanzania, landlords increased rents per room by an average of 160 per cent.[43] In

[38] United Nations Conference on Housing and Sustainable Urban Development (Habitat III), issue paper No. 20, "Housing" (31 May 2015).

[39] Liam Clegg, "The World Bank and the globalisation of housing finance: mortgaging development" (London, Bretton Woods Project, July 2018).

[40] See www.habitat.org/where-we-build/tajikistan.

[41] Ananya Roy, *Poverty Capital: Microfinance and the Making of Development* (Routledge, 2010).

[42] Anna Anael, Stephen Mukiibi and Nicholas Makoba, "The impacts of informal settlement upgrading on housing affordability: the experience of Hanna Nassif in Dar es Salaam, Tanzania" *Africa Habitat Review*, vol. 10, No. 10 (November 2016).

[43] Rasmus Precht, "Informal settlement upgrading and low-income rental housing: impact and untapped potentials of a community-based upgrading project in Dar es Salaam, Tanzania" (2005). Available at http://siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/336387-1269364699096/6892630-1269364758309/precht.pdf.

Kibera, Kenya, studies have found that former residents have been unable to afford to purchase or pay monthly rents for new upgraded properties.[44]

66. Measures such as subsidies to assist with rental payments or purchase prices and caps on rental and sale prices must be put in place to ensure that housing in upgraded settlements remains affordable to residents and that speculation and profit-making from upgrading is curbed. Other measures could also include designating land on which upgrading occurs as a public asset, placing restrictions on who can purchase or rent upgraded housing and imposing time limits on when it can be sold.

16. Upgrade refugee and humanitarian relief camps to ensure the right to housing

67. Housing provided through humanitarian relief is often considered to be temporary when in fact the camps have become longer-term homes, akin to informal settlements. Residents live in temporary structures that are inadequate for longer-term occupancy and are often denied access to essential services such as electricity and sewerage.[45] The Zaatari refugee camp, housing close to 80,000 people, has been described as Jordan's fourth largest city, and yet residents, who are unlikely to be able to return to their homes of origin, continue to live in tents and caravans without access to basic services.[46]

68. Humanitarian relief provided on a long-term basis must be made fully compliant with the right to adequate housing and when relief camps become de facto informal settlements, they must be upgraded to meet standards applicable to longer-term housing.

17. Address and prevent corruption

69. With lack of governance structures, rule of law and oversight mechanisms, corruption among developers, the construction industry and public officials is a common challenge in upgrading schemes. The precarious legal status of many residents, combined with their general vulnerability, means that corruption often goes unchallenged. Corruption increases costs, discourages international assistance and damages the integrity of participation processes.

70. During the slum upgrading programme (KENSUP) in Soweto East in Nairobi, Kenya, 31 per cent of residents believed corruption would mean they would not benefit from the project.[47]

71. Measures must be put in place to prevent corruption at all stages of upgrading, from land acquisition, to tendering of contracts, to the allocation of upgraded housing units. Rigorous independent oversight of all aspects of the upgrading process, including all public-private partnerships, should be put in place and, where appropriate, communities should be afforded oversight and decision-making authority over resource allocation and anti-corruption measures.

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[44] Bernardine Mutanu and Faith Nyamai, "Upgraded slum houses 'too expensive'", *Daily Nation*, Nairobi, 28 August 2013.

[45] See, for example, "15 minutes to leave: denial of the right to adequate housing in post-quake Haiti" (London, Amnesty International, 2015)

[46] Office of the United Nations High Commissioner for Refugees, Zaatari Refugee Camp February Factsheet. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2018.02.04FACTSHEET-ZaatariRefugeeCampFEB2018.pdf.

[47] Rosa Flores Fernandez and Bernard Calas, "The Kibera Soweto East Project in Nairobi, Kenya", Institut français de recherche en Afrique, Nairobi (2011).

B. Right to participation and inclusion

18. Recognize and implement participation of residents as a right at all stages of the upgrading process

72. Fundamental to all relocation strategies is the right of residents to participate. This is both a legal requirement and an operational necessity. Failure to involve residents in relocation planning and implementation means the residents' understandings of challenges and their vital input on how to address them will be lost. Residents' full participation in upgrading programmes builds local capacity for governance, promotes resourcefulness, efficiency, adaptation to local conditions and local ownership and ensures the achievement of sustainable results.[48]

73. The right to participation should be protected in law through constitutional or legislative provisions, as in the Constitution of Kenya.[49] The right to participate must be ensured from the earliest stage of designing and planning through to implementation, monitoring and evaluation.[50]

74. The right to participate should be implemented in a clear and precise manner, and must ensure engagement with actual residents, and not just owners or informal landlords. Where appropriate, a formal, binding community engagement agreement should be negotiated with residents establishing when and how the community will be engaged at each stage of the process.

75. The Makhaza community in South Africa was able to rely on a formal agreement reached with the City of Cape Town to successfully reverse the City's decision to refuse to provide enclosures for privacy in newly installed communal toilets.[51]

19. Establish community-based processes for democratic decision-making

76. Participation in upgrading requires democratic processes through which the community can make collective decisions. These processes should facilitate community meetings, the appointment of spokespersons and effective sharing of information.

77. The "people's process" implemented in Kabul ensures community leadership and control over the upgrading process with an organizational structure that engages different levels of government. At the community level, local residents elect community development councils responsible for the selection, design, implementation and maintenance of the projects. At the municipal level, the City trains staff to work alongside residents in implementing and completing upgrading.[52]

78. Participation in upgrading should include engagement with existing community structures and organizations where these are considered by the community to be legitimate and representative.[53]

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[48] South Africa, Development Action Group, Department of Human Settlements and Housing Development Agency, "Participatory action planning for informal settlement upgrading" (2015); and National Upgrading Support Programme, "NUSP resource kit, part 3: building partnerships".

[49] Constitution of Kenya, art. 10(2)(a).

[50] United Nations, guiding principles on extreme poverty and human rights, foundational principles, para. 38.

[51] South Africa, Western Cape High Court, *Beja and Others v. Premier of the Western Cape and Others*, Case No. 21332/10, 29 April 2011.

[52] Haroon Nazire and others, "Effects of informal settlement upgrading in Kabul City, Afghanistan: a case study of Afshar area", *Current Urban Studies*, vol. 4, No. 4 (28 December 2016).

[53] Promoting Legal Empowerment in Informal Settlements: Recommendations and Lessons Learned, International Development Research Centre, Africa-Latin America Partners Workshop, Quito, Ecuador, 26 and 27 March 2018.

20. Ensure access to information and provide resources for community advocates

79. In order to exercise their right to participate, residents must be provided with accessible information regarding the upgrading process, including relevant laws and information about their rights. Advocates, chosen by the community, should be provided with necessary resources so they can advise communities on what is at stake and assist in ensuring effective community oversight.[54] Professionals should be provided with training in community engagement and accountability. Resources and disbursements for expenses should be provided to support the participation of residents.[55] Remuneration should also be available to residents, chosen by the community, who play particular leadership roles.

21. Document the unique profile of each community, linking upgrading to historical struggles for rights

80. Residents of informal settlements should be supported in documenting the history of their settlement. Planners and development partners need to consider informal settlements not only as geographically but also as historically defined communities, considering how and why the site was chosen, what claims have been made by residents and other parties, and how the right to housing is understood by those who live there.[56]

81. Demographic information should be gathered to build a complete picture of the community and the needs of residents, including detailed maps of the settlement, numbers of households and individuals, tenure status (including informal renters), means of livelihood, housing expenditure, service provision status and local governance structures.[57]

82. The Shack Dwellers Federation of Namibia has gone door-to-door to profile the location and history of settlements and their access to services, demographics and organization structures.[58] United Cities and Local Governments, Slum Dwellers International and the Cities Alliance have launched a global campaign, called "Know Your City" whereby city residents themselves collect citywide information regarding informal settlements. To date it has profiled 7,714 settlements in 224 cities.[59]

22. Ensure full inclusion of women in all aspects of upgrading programmes

83. Although women often assume leadership roles within informal communities in relation to housing and social needs, they are frequently excluded from formal engagement with governments and developers. And yet, it is their ability to share their specific experiences and insights that makes their participation vital to successful upgrading. Women and girls must be supported in assuming key leadership roles and equal participation.

84. In the Caracas Slum Upgrading Project, women were offered training on such issues as rights, leadership and domestic violence and took an active role in

[54] Ruth McLeod, "Building effective relationships with the urban poor and government", Comic Relief Literature Review, People Living in Urban Slums International Grants Programme (June 2011).

[55] "Acuerdo por la urbanización de las villas" (see footnote 9).

[56] Promoting Legal Empowerment in Informal Settlements.

[57] National Upgrading Support Programme, "NUSP resource kit, part 1: understanding your informal settlement".

[58] See https://sdfn.weebly.com/background.html.

[59] See http://knowyourcity.info/explore-our-data/.

consultations, construction work and supervising projects, including in paid roles as project staff.[60]

C. Monitoring and access to justice

23. Establish an independent participatory body to monitor progress and hear complaints

85. Proper monitoring of progress and ensuring accountability with regard to goals and timelines is a critical component of rights compliant upgrading. A delegated body or individual, such as an upgrading ombudsperson or community oversight panel should be established to ensure independent, fair and impartial assessment of progress.

86. Complaints procedures should be established to hear directly from residents about problems, ensure respect for their rights and implement rights-based dispute resolution procedures.

87. Monitoring bodies must have access to relevant information and data, disaggregated based on group demographics. They should have resources and capacities to conduct community surveys, monitor activities, meet with residents, staff and managers, and convene public hearings. Reports, recommendations or decisions should be published publicly in accessible formats. All levels of government should be required to respond promptly to recommendations or concerns of monitoring bodies.

24. Guarantee access to justice for human rights claims through community-based adjudication

88. In order to ensure that upgrading plans are implemented in a rights-compliant manner, residents need to be aware of their rights and have avenues through which they are able to claim and enforce them. In many settlements, alternative modalities of justice, including traditional and indigenous practices and community-based mechanisms, are more accessible than formal courts — often operating directly within the communities they serve and adjudicated by local people who hold the trust of residents. Certain issues such as unit allocation or accommodation of disability may be more effectively adjudicated through local procedures.

89. It is essential that informal justice processes are in place to review project design, implementation and outcomes and ensure that all actors — public and private — are held accountable to standards of rights-compliant decision-making.

90. Community-based adjudication of land and housing issues has been used effectively in informal settlements in Ghana and other countries.[61] In Thailand, respected monks have played a role in adjudicating disputes. Justice and Empowerment Initiatives in Nigeria trains and provides resources to community-based paralegals to work directly in their own informal settlements, teaching other residents about their legal rights, assisting in the preparation of legal claims and establishing mediation and negotiation to resolve disputes.[62]

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[60] United Nations Human Settlements Programme, *State of Women in Cities 2012–2013: Gender and the Prosperity of Cities*.

[61] Anthony Arko-Adjei, *Adapting land administration to the institutional framework of customary tenure: the case of peri-urban Ghana* (Amsterdam, Delft University Press, 2011).

[62] Moyosore Arewa, Janelle Deniset and Nicole Gladstone, "Final Capstone report: global experience promoting access to justice, voice and livelihoods in informal urban settlements" (International Development Research Centre, 2017).

25. Take necessary measures to ensure that the judicial system protects the rights of informal settlements

91. Major initiatives are required in all countries to enhance the capacity and commitment of courts, tribunals, human rights institutions, ombudspersons and other bodies to protect and enforce the right to housing of informal settlement residents. Judges, tribunal members and administrative decision-makers should be trained in the right to housing under international and comparative human rights law as it applies to upgrading of informal settlements.

92. Courts and tribunals must rigorously apply the prohibition of forced eviction and uphold the requirement of meaningful engagement with residents. They must hold governments accountable to all components of the obligation to progressively realize the right to housing in informal settlements. They should encourage and hear systemic claims related to, among other things: inadequate budgetary allocations; failure to comply with timelines or to meet agreed upon goals; inadequate engagement or collaboration with communities; and failure to consider the needs of marginalized groups within settlements. Courts and tribunals should be authorized to remain seized of matters and to require regular reports on progress and outcomes until the desired outcome is reached. Alternatively, courts may consider delegating oversight to an independent body such as an ombudsperson or a human rights institution with respect to the implementation of remedial orders.

93. States must make concerted efforts to address barriers to access to justice experienced by informal settlement residents. Measures should include: (a) enabling courts to convene public hearings in locations close to residents so as to reach remote communities;[63] (b) training judges, law clerks and lawyers to work more effectively with informal residents; (c) allocating special funds to law schools to offer courses on legal advocacy in informal settlements; (d) supporting legal advocacy organizations to work with residents; (e) ensuring legal aid is available; (f) establishing procedures for amicus and public interest litigation to address systemic issues; (g) ensuring that national human rights institutions have a mandate and resources to work with residents of informal settlements in claiming and enforcing their right to housing; and (h) providing for early intervention, interim orders and injunctive relief to address urgent circumstances, particularly when forced evictions may occur.

94. In the Philippines, the Alternative Law Group represents a large network of organizations working at the community level to identify barriers in the justice system faced by residents of informal settlements. The Group advocates for systemic change to the justice system by working with law schools, the Supreme Court, the Department of Justice, the Commission on Human Rights, the police and the legal and judicial community.[64]

D. Informal settlements and the environment

26. Assess and respond to environmental risks posed to informal settlements

95. People are frequently driven to live in informal settlements by environmental factors such as natural disasters, climate change and environmental degradation, but the settlements to which they migrate also place them at increased environmental

[63] Jane Weru, Waikwa Wanyoike and Adrian di Giovanni, "Confronting complexity: using action-research to build voice, accountability, and justice in Nairobi's Makuru informal settlements" in J. Wouters and others (eds.), *Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability* (World Bank Legal Review, Vol. 6, 2015).

[64] See http://www.alternativelawgroups.ph/index.php/about-us/partnerships-and-linkages.

risks. Land that is vulnerable to flooding, storm surges, mudslides, earthquakes or other natural disasters, or contaminated with industrial waste, is more likely to be vacant and its use is less likely to be contested by development interests.[65] Without adequate economic, material and technical resources, residents of informal settlements are unable to construct homes that are capable of withstanding harsh weather conditions and disasters.[66] When natural disasters strike, death tolls are vastly higher in informal settlements than they are in formal areas and the health consequences of environmental degradation and pollutants in informal settlements are severe.[67]

96. It is essential that the full scope of all the environmental risks faced by informal settlements be assessed, drawing on the knowledge of inhabitants or experts hired on their behalf, since they are more familiar with the environment in which they live and have often adopted risk management practices.[68]

97. Where settlements exist in areas at risk from natural disasters, States should designate these areas for immediate and effective disaster risk management measures, tailoring approaches to suit the specific needs of the community.[69] States should not, however, use risk management as an excuse for unnecessary displacement. Where relocation and resettlement to a nearby site is necessary for the protection and safety of residents, this should be accomplished through collaboration and agreement, as described above.

98. The Bang Bua settlement in Thailand was prone to flooding from a canal. Officials coordinated with residents to prevent construction in the worst affected areas, improve the structural safety of buildings and provide increased access to the community in times of high water. In 2011 the defences proved able to withstand the widespread flooding following Typhoon Nock-ten and Bang Bua was the least affected settlement in Bangkok.[70]

E. International cooperation and development assistance

27. Ensure that all upgrading projects supported by international financial institutions and development cooperation agencies adhere to human rights standards

99. International financial institutions and development banks, such as the World Bank and the Asian Infrastructure Investment Bank, play a significant financial and policy role in housing improvement schemes for residents of informal settlements. These actors have gradually shifted away from a slum clearance approach to one that generally supports in situ solutions and participation of affected communities in the design and implementation of urban renewal projects. They do not, however, sufficiently reference the right to adequate housing and its application to upgrading projects.

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[65] Matthew Abunyewah, Thayaparan Gajendran and Kim Maund, "Profiling informal settlements for disaster risks", 7th International Conference on Building Resilience, 2017.

[66] Submission of Socio-Economic Rights Institute of South Africa for the present report.

[67] See United Nations Office for Disaster Risk Reduction, *Global Assessment Report on Disaster Risk Reduction*, chap. 4 (United Nations, Geneva, 2009).

[68] David Satterthwaite and others, "Responding to climate change in cities and in their informal settlements and economies", International Institute for Environment and Development, March 2018.

[69] Abunyewaha and others, "Profiling informal settlements for disaster risks".

[70] Asian Disaster Preparedness Center, *Integrating Disaster Risk Management into Urban Management* (Bangkok, Disaster Risk Management Practitioners Handbook Series, 2013).

100. International financial institutions have in recent years also moved away from direct assistance to the poorest households and instead supported mortgage financing for homeownership. This approach has been shown to deny benefits to the residents of informal settlements who most need assistance.[71]

101. The Special Rapporteur continues to hear that residents are not meaningfully engaged in upgrading and that safeguards provided by international financial institutions and development banks are ignored in favour of weak domestic processes. Complaint mechanisms rarely require or ensure compliance with the right to housing, vary in terms of accessibility and independence and have generally produced disappointing results as far as ensuring effective remedies for complainants.[72]

102. Many development cooperation agencies have failed to adopt human rights compliant safeguards and approaches and few explicitly reference the right to housing. The result has been that resettlement and compensation schemes are often insufficient or not adhered to by implementing partners.[73]

103. Development agencies should only fund and implement informal settlement improvement projects if they are undertaken in strict compliance with international human rights law and principles, as elucidated in these recommendations. Funding to governments must be made contingent on compliance with these human rights standards and procedures should be in place ensure immediate responses from governments when human rights are threatened.

104. International financial institutions and development agencies should review programmes to ensure that a focus on mortgage financing does not deny benefits to those most in need. A robust and timely complaints mechanism for any upgrading project must be accessible to all residents for a review of any decision taken that may be contrary to their human rights.

F. Violence and crime

28. Recognize informal settlement residents engaged in claiming the right to housing as human rights defenders

105. It is unfortunately common for police, security forces and other hired personnel to use force and violence, including with weapons, when informal settlement residents resist forced eviction or are otherwise claiming their right to housing through protest.[74]

106. Those who resist forced eviction and claim their right to housing must be treated as human rights defenders by government authorities and security forces and the international community should respond accordingly when their rights are violated. If police or security personnel are required to use force for other reasons, the principles of necessity and proportionality need to be respected and they must conduct their operations in line with human rights standards, respecting and protecting the

[71] Clegg, "The World Bank and the globalisation of housing finance".

[72] C. Daniel and others (eds.) *Glass Half Full? The State of Accountability in Development Finance* (Amsterdam, Centre for Research on Multinational Corporations, January 2016). Available at www.glass-half-full.org.

[73] See World Bank/Organization for Economic Cooperation and Development, *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges*, 2nd ed. (Washington, D.C., 2013).

[74] Nation Nyoka and Dennis Webster, "Metro police fire rubber bullets at residents in Ekurhuleni's Good Hope settlement", *Daily Maverick*, 18 May 2018; Amnesty International, "'Just move them': forced evictions in Port Harcourt, Nigeria", 28 October 2010; Dom Phillips and Júlio Carvalho, "Police operation in Rio favela leaves at least eight people dead", *The Guardian*, 25 March 2018.

rights of informal settlement residents and their property.[75] Where excessive force is used against informal settlement residents, the situation must be referred to an independent and impartial panel for investigation and remedy.[76]

29. Investigate and prevent violence against women and girls

107. Women and girls living in informal settlements are at much greater risk of experiencing gender-based violence than the general female population.[77] Toilets, water and other services are often located at some distance from homes, and insecure houses and lack of electricity and resultant dark walkways put women and girls at increased risk of violence and sexual assault.[78] Extreme poverty, destitution, overcrowding and long-term unemployment are contributing factors to violence against women. Women rarely have access to emergency shelters for protection from domestic violence in informal settlements.

108. Women should be involved in identifying and immediately implementing priority measures to address violence and to ensure that all upgrading addresses their safety and security risks.

109. Procedures must also be implemented to provide support for women reporting violence and sexual assault, so as to ensure their safety, including the provision of emergency shelters.

30. Ensure adequate protection of informal settlement inhabitants from hate-based crime

110. People living in informal settlements are often subjected to terrible acts of violence on the basis of their perceived membership in a particular racial, social, cultural or religious group. Hate-based attacks have led to the destruction of homes and property, physical injuries and death.[79] Police and security forces often fail to adequately protect residents and may serve to perpetuate hatred as a result of their own discriminatory stereotypes.[80]

111. Police and security forces must receive human rights training and education to address discriminatory stereotypes and authorities must work in conjunction with residents to implement effective responses to hate-based crime.

G. Business and human rights

31. Redirect private investment in housing and real estate to support upgrading and create affordable housing

112. It is clear that the Sustainable Development Goals cannot be met by Governments alone and that private investment will play a significant role. It has been

[75] Guidelines on development-based evictions, paras. 47–51.

[76] See Stuart Casey-Maslen, *Use of Force in Law Enforcement and the Right to Life: the Role of the Human Rights Committee*, Academy in-brief No. 6 (Academy of International Humanitarian Law and Human Rights, Geneva, November 2016).

[77] Elizabeth Swart, "Gender-based violence in a Kenyan slum: creating local, woman-centered interventions", vol. 38, No. 4, *Journal of Social Service Research* (April 2012).

[78] Submission of Socio-Economic Rights Institute of South Africa for the present report.

[79] Office of the United Nations High Commissioner for Human Rights, "Ukraine: Act now to stop systematic persecution of Roma minority in 'alarming' attacks, say UN experts", 28 July 2018; "Ukraine's Roma under attack in wave of hate crimes, *The Express Tribune*, 1 July 2018; submission of Associazione 21 Luglio Onlus for the present report.

[80] Report of the "Dialogue on human rights and policing", hosted by the African Policing Civilian Oversight Forum in cooperation with the South African Human Rights Commission, 28 and 29 April 2016.

estimated that to build all of the needed housing over the next decade would cost up to $16 trillion in spending on land and construction, of which only $3 trillion would be expected to come from public funding.[81]

113. In her previous report on the financialization of housing, the Special Rapporteur noted that current financial regimes and investment patterns in housing have created unaccountable markets that fail to address housing need, increasingly driving lower income households in cities into homelessness and informality (A/HRC/34/51, paras. 3 and 29). She has called for a radical shift to redesign housing markets and investment centred on the recognition of housing as a human right and a social good rather than a commodity.[82]

114. It is essential, therefore, that private investment be better directed to meeting the needs of the quarter of the population of cities living in informal settlements. This means adopting a new commitment to human rights responsibilities within the residential housing and construction sectors. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, requiring that investors avoid any activity that results in displacement of communities or the destruction of habitat, must be applied to ensure that a reasonable component of any private development and investment in land or housing is directed towards the housing needs in informal settlements. A global initiative, led by States and international financial institutions, is required to provide reliable mechanisms for capital investment in upgrading, directed by communities themselves.

III. The way forward

115. **The numbers of people living in informal settlements, the resources required for upgrading and the level of deprivation of rights experienced among the residents make the goal of upgrading all settlements by 2030 daunting. The tables of indicators and statistics compiled for monitoring progress towards 2030 are somewhat overwhelming. But more is required than a commitment to improved numbers and statistical trends.**

116. **The recommendations above are oriented around two key themes that are the pillars of human rights-based approaches to upgrading. First, that upgrading must build on, rather than undermine, the capacities of communities to claim and realize their rights, with adequate support and resources from States, international organizations and redirected private sector investment. And second, that the obligation to address the systemic violations of the right to housing in informal settlements must be recognized as a human rights imperative of States around the world for which there must be accountability.**

117. **Underlying these two key themes is one simple truth — something that is clear to the Special Rapporteur every time she visits residents living in appalling conditions in informal settlements in the midst of or on the margins of thriving cities where commercial and luxury residential developments abound. That truth is that by any measure — moral, political or legal — it is unacceptable for people to be forced to live this way. Refusing to accept the unacceptable is where we must begin. All actors must mobilize within a shared human rights paradigm around the imperative of upgrading all informal settlements by 2030.**

[81] Jonathan Woetzel and others, "A blueprint for addressing the global affordable housing challenge" (McKinsey Global Institute, October 2014).

[82] See http://www.unhousingrapp.org/the-shift/.

United Nations A/73/311

General Assembly

Distr.: General
8 August 2018

Original: English

Seventy-third session
Items 143 and 25 (b) of the provisional agenda*
Joint Inspection Unit
Operational activities for development: South-South cooperation for development

Progress report on the recommendations contained in the review of South-South and triangular cooperation in the United Nations system (JIU/REP/2011/3)

Note by the Secretary-General

The Secretary-General has the honour to draw the attention of the members of the General Assembly to the report of the Joint Inspection Unit entitled "Progress report on the recommendations contained in the review of South-South and triangular cooperation in the United Nations system (JIU/REP/2011/3)," which is available under the symbol JIU/REP/2018/2.

* A/73/150.

18-13089 (E) 100818

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United Nations A/73/311/Add.1

General Assembly

Distr.: General
7 August 2018

Original: English

Seventy-third session
Items 143 and 25 (b) of the provisional agenda*

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Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled "Progress report on the recommendations contained in the review of South-South and triangular cooperation in the United Nations system (JIU/REP/2011/3)" (see A/73/311).

* A/73/150.

18-12922 (E) 130818

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Summary

In its report entitled "Progress report on the recommendations contained in the review of South-South and triangular cooperation in the United Nations system (JIU/REP/2011/3)" (A/73/311), the Joint Inspection Unit responds to the requests of the General Assembly in resolutions 71/244 and 72/237 to review the status of recommendations contained in its earlier report on the same topic (see A/66/717) and provides an assessment of the progress made since 2011.

The present note reflects the views of organizations of the United Nations system on the recommendations provided in the report. The views have been consolidated on the basis of inputs provided by member organizations of the United Nations System Chief Executives Board for Coordination, which welcomed the report and supported its conclusions and recommendations to the General Assembly and the High-level Committee on South-South Cooperation.

I. Introduction

1. In its report entitled "Progress report on the recommendations contained in the review of South-South and triangular cooperation in the United Nations system", the Joint Inspection Unit reports on the progress made since the Unit's previous report,[1] which included 12 recommendations to the United Nations development system on the ways and means of enhancing system-wide contributions to South-South and triangular cooperation, addressing issues of mandates, frameworks and policies, intergovernmental processes, structures, financing and coordination.

II. General comments

2. Organizations of the United Nations system welcome the progress report of the Joint Inspection Unit on South-South and triangular cooperation in the United Nations system and welcome the recognition of the progress made at the organizational and system-wide levels since the previous report was published.

3. Organizations recognize the coordinating role of the United Nations Office for South-South Cooperation and its guidance, including in the area of resource mobilization, noting that this motivates greater cooperation in the development of South-South/triangular cooperation-related projects among project managers within the same organization.

4. Organizations note that, while the recommendations contained in the report are addressed to intergovernmental bodies, namely, the General Assembly and the High-level Committee on South-South Cooperation, for their deliberations as appropriate, they could have positive implications for most organizations in advancing South-South/triangular cooperation.

III. Comments on specific recommendations

Recommendation 1

The General Assembly should request the High-level Committee on South-South Cooperation to streamline its reporting requests to the United Nations Office for South-South Cooperation, with a view to enhancing the efficiency of the Office in a manner that eliminates duplication of work.

5. Organizations note that this recommendation is addressed to the General Assembly and welcome the concept of avoiding duplication of report production and related cost savings.

6. Organizations recall that, currently, there are two mandated reports of the Secretary-General containing United Nations system-wide related information: (a) on the state of South-South Cooperation, submitted to the Second Committee of the General Assembly and subsequently to inform the substantive discussions of the High-level Committee on South-South Cooperation, during the following year; and (b) review of progress in the implementation of the Buenos Aires Plan of Action, the new directions strategy for South-South Cooperation and the decisions of the High-level Committee", and appreciate the fact that United Nations system-wide reporting requests are channelled through the United Nations Office for South-South Cooperation.

[1] JIU/REP/2011/3.

Recommendation 2

The High-level Committee on South-South Cooperation should request the United Nations Office for South-South Cooperation to develop a system-wide resource mobilization strategy, as well as measures to strengthen its role in knowledge-sharing, by the end of 2019.

7. Organizations note that this recommendation is addressed to the High-level Committee on South-South Cooperation.

8. Organizations welcome this recommendation, although they underscore the importance for individual United Nations agencies to mobilize resources for South-South/triangular cooperation work in the context of their respective mandates and the need for the support of the United Nations Office for South-South Cooperation for that effort.

9. Organizations support the suggestion to strengthen the role of the United Nations Office for South-South Cooperation in knowledge-sharing and exchange of experiences within the United Nations system on South-South and triangular cooperation. Organizations also recognize the need for stronger coordination of resources mobilization by United Nations system entities, as well as the development of joint approaches when working with donors and emerging providers. However, organizations observe that the report leaves unclear what would be the scope and purpose of the proposed "system-wide resource mobilization strategy" and suggest further clarity on these, to provide an understanding of the impact of the strategy.

10. Organizations welcome a strengthened role for the United Nations Office for South-South Cooperation in knowledge-sharing around South-South Cooperation, including fostering greater mutual learning between United Nations entities, as well as sharing the latest developments and good practices.

11. Currently, the United Nations Office for South-South Cooperation is coordinating the United Nations system-wide strategy on South-South Cooperation, in cooperation with all relevant United Nations system organizations, to be finalized in time for the Second High-level United Nations Conference on South-South Cooperation, to be held from 20 to 22 March 2019. The Conference could consider a system-wide resource mobilization strategy and knowledge-sharing mechanism as integral components, as needed.